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BIOGRAPHICAL, LITERARY,
AND
POLITICAL
ANECDOTES,
OF SEVERAL OF
THE MOST EMINENT PERSONS
OF
THE PRESENT AGE.

NEVER BEFORE PRINTED.

WITH AN
APPENDIX;
CONSISTING OF
ORIGINAL, EXPLANATORY, AND SCARCE
PAPERS.

BY THE
AUTHOR OF ANECDOTES OF THE LATE EARL OF CHATHAM.

HISTORIAM, OMNIUM SECRETORUM MEMORIAM DICO.—Cicero.

IN THREE VOLUMES.

VOLUME I.

LONDON:

PRINTED FOR T. N. LONGMAN, AND L. B. SEELEY,
IN PATER-NOSTER-ROW.

1797.



PREFACE.

THE reputation and conduct of Great Men, who have filled high situations in the State, must always be interesting to the Nation. The Memoirs of such persons can never be too frequently read and studied. Nor can any injury happen, where Truth only is the guide of the Writer.

Of these Anecdotes, the Editor begs leave to say, that he is not conscious of having advanced a single untruth; that very few of them have been printed before; that it has been his wish and care to avoid whatever is to be found in other books, except in two or three instances, where he has been under the necessity of connecting the facts.

There is no impropriety in the publication; because every part of it relates to
2 public

public men, and to public measures. It is not less justice to the great characters themselves, than it is to the Public, to communicate them. A fastidious secrecy of measures and motives, in matters of public concern, when the events and their consequences have totally ceased, Lord Bacon denominates a suppression of truth, history and character.

The Appendix consists of Papers; some of which are original, others are explanatory of passages in the Work, and all of them are now so extremely scarce, that it would be very difficult, if not impossible, to procure them.

London,

November 16, 1797.

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IN an impartial history of the times in which we live, if such a work should ever
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be written, the character and conduct of this noble Duke will appear not less respectable than honourable, in the discharge of his official duties.

Until such history shall appear, a few traits of his Grace's character, which have not yet been stated accurately to the public, it is presumed will not be judged unnecessary or improper.

The nation has an interest in the characters of persons of high rank. If the idea may be permitted, they might be called the property of the public. They are born to the great offices of the state: and whenever their talents are found adequate, and they are often superior, to the duties of those stations, the prejudices of a King ought never to stand in the way of the public service.

When his Grace had attained the age, prescribed by law, for taking his seat in the hereditary council of the nation, he joined the body of great, popular, and dignified persons,

persons, at that time called *the minority*; which consisted of near two-thirds of the first-rate families of England; who had associated together, to oppose the destructive measures of the King's favourite.

No circumstance could be more honourable to himself, than this early mark of his attachment to those principles, which had made the revolution necessary, and the consequent introduction of the Hanoverian succession. He saw all those principles violated by the conduct of the Earl of Bute; for it must not be forgot, that the Earl of Bute's system of government, which has been continued by other hands, and although it has sometimes been interrupted, yet it has always revived, has been the true source, and cause, of all the disturbances at home, and disgraces abroad, which have distinguished the present reign. The distinction was never worth ascertaining, whether Lord Bute held the reins of government in his own hands, or in those of his delegates; nor are the periods of his influence worth a figure in chronology, if they did not serve to shew

the vanity of some men, who thought themselves ministers in those years, when he governed the closet as absolutely and entirely, as when he openly held the first offices in the state ; and when he abdicated the government, he gave the key of his secret influence, and the system of his theory, to those persons to whom he had given his confidence ; who may, indeed, be said to have sometimes exercised their power with more address, but certainly not with less mischief.

In the administration that was recommended by the Duke of Cumberland, in the year 1765, his Grace accepted the office of Secretary of State ; but finding towards the close of the succeeding session of parliament, that the Earl of Chatham was become adverse to that administration, he resigned his office. He had accepted the seals under the hope and expectation of the ministry's having the support of the Earl of Chatham. The discovery of this misconception, determined his Grace to resign. He thought the ministry were not strong enough,

enough, without Lord Chatham's assistance, to resist the influence of the Earl of Bute. In a short time they experienced the fact: the Duke resigned in May, 1766, and at the end of July following they were all turned out.

The next administration was arranged by Lord Chatham. In this arrangement his Grace had the post of First Lord of the Treasury.

The infirmities of the Earl of Chatham, which, in about four or five months after the arrangements were made, fell heavy upon him, gave to his Grace the entire exercise of the powers of government. The prominent feature of his administration is the case of Mr. Wilkes, concerning his election for the County of Middlesex. At the meeting of parliament in November, 1768, Mr. Wilkes was under execution of two judgments; the manner of obtaining one was sufficiently base to have disgraced the Star Chamber—the other was a party-trick—Such are *political* prosecutions! The cir-

cumstances, and proceedings, concerning the Middlesex election, are well known: but those of the commencement, have either not been impartially stated, or not properly attended to.

While Mr. Wilkes was at Paris, the Duke of Grafton sent assurances to him, by his brother, the late Lord Southampton, that Mr. Wilkes should find him to be his real and sincere friend; ready to concur in doing him justice; but there were many particulars concerning him, which could not be communicated by letter, nor entrusted by the post.

When Mr. Wilkes came to England, he solicited his friend, William Fitzherbert, Esq. member for the town of Derby, a gentleman universally beloved, to wait on the Duke with his professions of regard, and that he submitted to his Grace, the mode of application he ought to make, to the King, for his pardon. The Duke told Mr. Fitzherbert, that Mr. Wilkes must write to Lord Chatham; that he did nothing without

out Lord Chatham. This answer offended Mr. Wilkes exceedingly; and he attacked the Duke with much severity upon it. He refused to apply to Lord Chatham, though his Lordship was then in London. And in his attack on the Duke, he was not less severe on his Lordship, upon the supposition, that they were become the tools of Lord Bute.

However, when Mr. Wilkes returned to England upon the dissolution of the parliament in the year 1768, he publicly appeared as a candidate for the City of London, and for the County of Middlesex, without any interruption or restraint from the executive officers, or powers of government. Mr. Grenville complained of this negligence, as he called it, of government, and declared, that if he had been minister, Mr. Wilkes should not have been four-and-twenty hours out of custody, after it had been known that he was in England. And after his election for the County of Middlesex, he remained totally unnoticed by government, until the month of November following;

when he thought proper to appear *voluntarily* before the Court of King's-Bench, at Westminster. His avowed purpose in this conduct was to distress the minister; who seeing his object, did not interfere. The law had its course: and it is certain, that the judgments were not so severe (though in the public opinion tenfold more than the crime merited) as might have been expected, if another person had been minister. It is not to Lord Mansfield's honour, that in his judgments on *political* crimes, he sometimes regarded more the sentiments of the minister of the day, than the pretended mischiefs of the libel.

Notwithstanding these circumstances, Mr. Wilkes might have kept his seat in parliament. The minister did not wish to deprive him of it. But Mr. Wilkes was determined to force himself upon parliament, as he had done upon the Court of King's-Bench. The outlawry was no bar to his seat in parliament; the case of Sir Francis Goodwin, in the year 1604, the late Lord Ravensworth's brother, and several others, are full to that point; and his qualification

lification being copyhold, was not affected by the outlawry. In a public address to the freeholders of the County of Middlesex, dated from the King's-Bench prison, on the third of November, 1768, he pledged himself to present a petition to the House of Commons, on the state of his case.

This petition, the minister foresaw, would create great debates. It was opening a wide field which had been gone over many times. He earnestly wished to avoid it. For this purpose, he requested Mr. Fitzherbert to wait on Mr. Wilkes at the King's-Bench, and to entreat Mr. Wilkes not to present his petition to the House of Commons, for the consequence must be the loss of his seat in parliament. Mr. Fitzherbert went to Mr. Wilkes on the 13th of November, 1768, accompanied by Mr. David Garrick. Mr. Fitzherbert assured Mr. Wilkes, that if he would be quiet he might keep his seat; but that if he presented his intended petition, he would certainly lose it. He earnestly and ardently entreated Mr. Wilkes to lay aside his design;

sign; he described to him the honour and advantage he would gain by so doing. And he further declared, that he made these assurances to Mr. Wilkes by the authority, and in the name of the minister; and that he had the minister's positive commands to promise and engage, that if the petition was not presented, no attempt should be made in parliament against Mr. Wilkes. And lastly, he hinted, that some small submission to the King was all that would be expected to accomplish his almost immediate enlargement.

Mr. Wilkes answered, that he should be ever ready to make any submission to the King, although he was not conscious of any intention to offend him; but that as to the petition (which contained nothing more than a short state of his case, from the time of his caption by the general warrant to his election for Middlesex) he thought it his duty to present it, and that on no terms whatever would he give it up.

Next

Next day the petition was presented by Sir Joseph Mawbey. The matter was thus forced upon parliament; and the first step was Mr. Wilkes's expulsion; a measure which the minister had foreseen. The subsequent measures were fortuitous; and arose out of the first. The nation is already so fully acquainted with them all, that any further mention of them here would be unnecessary; except only to observe, that they can never be drawn into precedents, Mr. Grenville's act for the trial of controverted elections having taken the power of determination, in all contested points, out of the House of Commons, and placed it in a Committee who decide upon oath.

The character of the Duke of Grafton's administration suffered much popular odium by these measures. And he was severely attacked from many quarters; particularly by a writer in the public prints, who signed his papers "Junius." The celebrity of them makes it not improper to take some notice of them here. In the first paper that was published, which was on the 21st of January, 1769, the writer, after
discant-

discanting on the state of the country and ministry, draws a character of the Marquis of Granby, at that time commander in chief of the army, in terms of the keenest satire. This part of the paper so highly provoked Sir William Draper, that he wrote an answer to it, and signed it with his own name. This answer produced a reply from "Junius;" and the reply produced a rejoinder from Sir William Draper, who always signed his name to his papers. This newspaper controversy, which lasted some time, attracted the public attention to the signature of "Junius," who had greatly the advantage of his antagonist in language and argument. If this circumstance had not happened, it is more than probable, that these fugitive papers would have passed into oblivion, like many others of considerable merit, before and since.

The charge which "Junius" made against the Duke of Grafton, concerning the oaks in Whittlebury forest, was totally unfounded. John Pitt, Esq. at that time surveyor-

surveyor-general of the King's woods, assured the editor, that Junius's statement of that matter was erroneous throughout, that no blame whatever could attach to the Duke in that affair.

The timber in Whittlebury forest is undoubtedly vested in the crown, and the right of felling it has repeatedly been exercised. The right to the under-wood is as clearly vested in the Duke of Grafton, as that to the herbage at the proper periods in the vicinage. In the attempt alluded to by Junius, to cut down the timber, the deputy surveyor was stopped by an order from the treasury; because the felling of the timber, at that time, would have destroyed all the under-wood, which would of course been a great injury to private property; and would likewise have deprived the neighbourhood of the right of commonage for nine or ten years. The timber was no longer withheld from the public service than was absolutely necessary. It had been preserved for that purpose, with an attention and an integrity, perhaps

note equalled in any other royal forests. At the proper period (about nine or ten years after) the timber was felled, as each coppice came in the course of cutting, according to the rule and the practice all over England.

The surveyor-general's report, made in the year 1776, of the state of the inclosures in his Majesty's forests, is a confirmation of the care taken by the Duke of the timber for the public service.

“ That there have not been any inclosures, purposely made for the growth and preservation of timber for the use of his Majesty's navy, in any other of the King's forests, but in those of Whittlebury, Salcey, Rockingham, and Whichwood; there are a great many anciently inclosed coppices, wherein the King's trees are well preserved.

“ That many thousand acres of land in his Majesty's forests may be inclosed, and applied to raising pines. There are also, and will ever be, within the inclosures now

in being, and hereafter to be made therein, some parcels of ground, of a nature less fit for the growth of oaks, in which the said surveyor-general of his Majesty's woods and forests purposes to plant the sort of pines fit for masts, yards, and bowsprits; and nurseries are actually preparing for that purpose; and, from his observations and experiments, and the concurring opinion of very good judges, he thinks it highly probable, that making inclosures purely for the last mentioned use will be attended with success, and prove very advantageous to this kingdom.

“ J. PITT, surveyor-general of his
“ Majesty's woods and forests.”

The bold assertions and keen invectives with which the papers of “ Junius ” abounded throughout, contributed greatly to their popularity and fame. They were occasionally attributed to Lord Sackville, to the Right Hon. W. G. Hamilton, to the Right Hon. Edmund Burke, to John Dunning, Esq. and many others, but without the least ground or foundation in truth. It is to be ob-
served

served of them, that all parties are attacked in them except the Grenvilles. During their original publication, the writer lived in Norfolk-street, in the Strand, not in affluent circumstances, but he did not write for pecuniary aid. He was a native of Ireland, of an honourable family, and of Trinity College, Dublin. He was at one time intended for the army, and at another for the bar; but private circumstances prevented either taking place. Perhaps no man possessed a stronger memory. He frequently attended parliament, and the courts in Westminster-hall. And sometimes he committed to paper the speeches he had heard. There are some of Lord Chatham's speeches on the American war, printed in the "Anecdotes of Lord Chatham's Life," which were taken by him; and they are allowed, by all those persons who heard them, to be accurate, even to minuteness. They want nothing but the dignified action, and eye of the noble Earl, to give them their original force and energy. When the public discontents concerning the Middlesex election, and other measures had abated, he

he ceased to write; which was about the close of the year 1771. However, towards the end of the year 1779, he resumed his pen; and wrote a number of political essays, or letters, which he entitled, "The Whig." They were printed in one of the public papers of that time. There were eighteen of them. But there being no Sir William Draper to call them into notice, they died, with the other papers of the day. In composition, they are not inferior to his former papers. The reader will find some extracts from them, in the Appendix, article A. In the year 1791, he went to Madras with Lord Macartney, to whom he had been known in Ireland; and there he died.

The circumstance of appointing Lord North Chancellor of the Exchequer, in the room of Mr. Townshend, who died in 1767, was considered, by many people, to be a proof of the continued influence of the Earl of Bute. But Mr. Bradshaw, who was secretary to the Duke of Grafton at that time, assured Mr. W. G. Hamilton, upon

his honour, that Lord Bute had no concern whatever in that appointment, nor in any other measure of administration; nor did he believe, he said, that Lord Bute had interfered, in any manner, with any administration, since the month of September, 1763; when, as Mr. Bradshaw said, he sent a letter to the King, stating a resolution which, for the King's service, as well as for his own ease, he had thought himself obliged to take; which was, to quit London; and to remove, if possible, all occasions of jealousy, to remain at his house in Bedfordshire during the whole of the ensuing winter. This letter, Mr. Bradshaw said, the King construed into a desertion of him. The fact, as far as it relates to Mr. Bradshaw, is unquestionable; the editor was assured of it by Mr. Hamilton, who made no secret of it. But whether Mr. Bradshaw was strictly correct, is not a matter quite so clear; because, some time afterwards, when Lord Bute wanted a military promotion for his son, the ministry refused to oblige him; upon which he wrote to a greater person for it.

it. And the fact of his meeting the Duke of Bedford and Mr. Grenville at Lord Eglintoun's, and of his negotiating during the winter following, with Lord Temple, through the medium of Carlton-house, are circumstances which shew, that Mr. Bradshaw's opinion of Lord Bute's pretended dereliction was not well founded. However, Mr. Hamilton thought that he believed what he said; and if so, he was the dupe of his own credulity. The Duke of Grafton was not fortunate in committing to him his entire confidence. Few Ministers have been so happy in their secretaries as Mr. Grenville was. Mr. Whateley and Mr. Lloyd were faithful to him. Lord Chatham used to say, "guard me from my friends; I'll guard myself from my enemies."

The Duke of Grafton was more unfortunate in having Mr. Yorke for his friend, and preferring his opinion to that of Lord Camden. Upon the death of Mr. Yorke, which happened in the month of January, 1770, the Duke of Grafton resigned his

post of First Lord of the Treasury ; being, by that gentleman's death, disappointed in having the Lord Chancellor he wanted. The dismissal of a Lord Chancellor, because he differs in opinion with the Minister, and the appointment of another, because he is flexible, may be constitutional ; but cannot be, at all times, prudent ; especially when done on a sudden. There seems to be an error in making the highest law officer a political minister ; for setting aside the consideration of human passions, weaknesses, partialities, and the long train of human frailties, of which every man has his share, either from his connections, or his education, not one of these alloys should, if possible, be permitted to discolour the purity of a court of equity : how often does it happen, that after the suitors in Chancery have, at a vast expence, brought their cause to a final hearing, the Lord Chancellor takes time to consider the matter, before he makes his decree ; and that, while causes are in this manner lying before him, a change in the ministry may take place, including the Lord Chancellor

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(as in 1766) or he alone may be removed (as in this case of Lord Camden) all such causes must be reheard, the counsel must have refreshing fees, fresh stamps are wanted, much money is expended, and much time is lost. This ought to be remedied. The Lord Chancellor might continue until all the causes before him are finished; or he might, like the Judges, be placed out of the reach of Ministers.

Upon the removal of Lord Suffolk to the office of Secretary of State, in the month of June, 1771, the Duke of Grafton succeeded his Lordship as Lord Privy Seal; but was not of the cabinet. In this situation his Grace continued until the month of November, 1775; at which time Parliament being met, and the affairs of America become extremely critical, his Grace requested information on this interesting subject, before he decided to support, or oppose, the measures of his colleagues in office. He therefore made a motion in Parliament for the produc-

tion of the papers he wanted. The motion was negatived, and his Grace was next day dismissed from his office.

The sudden and harsh manner of this dismissal, shews that his Grace had not been admitted to the secrets of the *interior* cabinet; and consequently was not, as Mr. Wilkes supposed, one of the tools of Lord Bute.

At this time there was a series of essays, or letters, publishing in the London Evening Post, distinguished by the signature of "Valens," written by Mr. William Burke [cousin to Mr. Edmund Burke, and secretary to General Conway, when that gentleman was Secretary of State] and by Mr. Richard Burke [brother to Mr. Edmund Burke] and they were occasionally assisted by Mr. Edmund Burke himself. These letters did not obtain the attention they deserved: perhaps they wanted a Sir William Draper also: but they throw much light on the period in which they were written. The dismissal of the Duke
of

of Grafton, is thus stated in the paper published on the eighteenth of November, 1775.

“ A person of the highest rank in the
 “ kingdom, in an office of the highest
 “ rank in the State, very lately First Mi-
 “ nister of State, in great personal favour
 “ with his Majesty, closely connected by
 “ the strongest ties of affinity, inclination
 “ and interest, with a leading part of the
 “ administration, and a constant and pow-
 “ erful supporter of their measures.—This
 “ man, finding the British Empire in
 “ America in danger of being lost, at
 “ last presumes to desire some little infor-
 “ mation, in this perilous state of our af-
 “ fairs. He is immediately dismissed from
 “ his employment, with every possible
 “ mark of displeasure. The favourers of
 “ administration are now acquainted with
 “ the terms upon which they are to sup-
 “ port Government. A great deal of the
 “ support, not only of well wishers with-
 “ in doors, but even of the members of
 “ both houses of Parliament, must be im-
 C 4 plicit.

“ plicit. The advantage of having men
“ of great rank, and interest in their
“ Country, in high stations, is this; We
“ suppose they have a spirit proportioned
“ to their station; that they look for some-
“ thing else in office, besides the salary;
“ that they are intitled to information
“ and explanation; that *they* at least are
“ depositaries of the real secret. On this
“ presumption, the support of such great
“ persons becomes a pledge to the pub-
“ lic, that the steps taken by the di-
“ recting part of ministry, are taken upon
“ proper ground. When the people at
“ large have reason to believe this to be
“ the case, they are apt patiently to ac-
“ quiesce in the ruling wisdom. Their
“ confidence subsists unshaken, even among
“ difficulties which embarrass their affairs,
“ and doubts that perplex their under-
“ standing. It has been now, for the first
“ time, thought proper to remove the
“ veil that was drawn between the peo-
“ ple and the Government. We are now
“ informed, that the support of the greatest
“ men in the kingdom, and in the highest
“ offices,

“ offices, is to be as blind and uninformed
“ as that of a Custom-house officer, who,
“ by order of the Treasury, votes at an
“ election for a Nabob. [The law pro-
“ hibiting revenue officers voting at elec-
“ tions, was made after this time.] Ig-
“ norant credulity, passive submission,
“ blind obedience, are virtues which po-
“ liticians have hitherto required, and
“ sometimes found—in the mob. Until
“ our happy days, these laudable dis-
“ positions have not been thought qua-
“ lifications for the highest offices in
“ a great Empire. At present it is not
“ enough to impose upon the people.
“ The purpose for which one half of
“ the ministry subsists, is to impose upon
“ the other half. By this happy inven-
“ tion it is, that a ministry, composed of
“ jarring principles and adverse opinions,
“ is to be rendered unanimous.”

Notwithstanding the several offices the Duke had filled, and the extensive patronage he had possessed, yet at no time did he secure for himself, nor for any of his

his children, although he has a numerous family, any place, pension, or reversion, whatever.

It is impossible to present a more honourable trait of this noble Duke's character, of his virtues as a patriot, or of his talents as a statesman, than an extract from his Grace's speech, in the House of Lords, on the 30th of May, 1797, on the motion of the Duke of Bedford to remove the Ministers, as it stands printed in the Parliamentary Register for J. Debrett.

His Grace, after stating the high and respectable situation in which Great Britain stood, at the time of the commencement of the war with France, demands,

“ What is now your situation? Great Britain is stript of, or deserted by, every ally on the Continent that could bring any essential aid: the last of whom, and an ally whose exertions might fairly be boasted of, if report says true, and this House has no other information, is just not

our enemy. The Bank of England, owing to the most unaccountable and fatal inattention, or rather neglect, on the part of the Lords of the Treasury, of the state of the circulating specie of the kingdom, when many schemes might have been proposed, probably to prevent, certainly to lessen, the alarming consequences which have followed---This Bank of England has received a wound, even in spite of the repeated representations of the Directors on the mischief which must arise from the bullion exported, and the excessive amount of the sums advanced to Government, together with a blot, which all the waters of Lethe will never be able to expunge, I mean by the effect of the Order of Council. The hand of power has appeared stretched out against the Bank, where a sagacious statesman, if driven to the measure, would, at least, have so conducted it as to have answered the same end, and have spared this indelible stain on the character and nature of the Bank,

“ Saint

“ Saint Domingo alone, without many conflicts, and no battle fought, besides the millions there lavished in the most wild and unjustifiable of all attempts, has (what is still more lamentable) proved to be a grave for the greater part of the troops sent thither, so that the remnant is but the skeleton of our once-noble army. The numbers, both of officers and men, who have successively fallen victims to dire diseases in that horrid climate, exceed what would be credited. Their relatives have to thank the wild and weak project of a rash and incompetent Minister, who may possibly still with insensibility answer, that such is the chance of war. I do not dare acquaint your Lordships to what a small number is reduced the regular infantry in England. The Minister ought to be aware of it; and I know what it is; and I now mention it as a warning to the noble Lord in office, that he, with his colleagues, may not be weakening this essential defence still farther by employing them on more fatal projects; when it is, and ought to be, the principal of all measures
to

to give security at home. The melancholy state of the navy affords a fresh proof of the incapacity and want of sagacity of Administration—who was there, except themselves, who did not see the propriety and necessity of assisting, in some suitable way, the seamen, when, at the moment of the high price of provisions, considerable indulgencies were directed for the soldiers? But it will possibly be asked, if these matters were so palpable, how happened it that those, who were of that opinion, were so totally silent on the subject?—for the plainest of all reasons: because the Lords in office, and their followers, would have been happy to have held such persons out as the fomenters of mutiny and sedition.

“ As to Ireland: That kingdom must be considered to be in so critical a state, that unless a reform, a *temperate* reform in Parliament, and a full emancipation of the Catholics, together with a total change of the men who now conduct the affairs in that country, take place, and directly, if
it

it be not now too late, we shall soon see that Ireland added to the list of Republics, which the fatal measures of our Ministers have been the cause of erecting and establishing all over Europe: but with this difference, that if a Revolution takes place in Ireland, it will inevitably produce a Revolution in Great Britain. Of no position in politics was I ever so assured of as of this, I protest: an axiom from which no arguments will ever be able to withdraw my reason. To prevent these greatest of evils extending hither, it will be wise to oppose the only effective remedy, which I earnestly recommend to the cool and dispassionate consideration of all your Lordships: I mean a *temperate* Parliamentary Reform in this country, without which the Constitution will slip from under us; and that great and sagacious statesman, who delivered in another place that inimitable argument in favour of Parliamentary Reform, might have added to the names of *Montesquieu* and *Machiavel*, that still more revered for wisdom, the name of our Lord Bacon, than whom there

was

was not a more strenuous advocate for the frequent revival and corrections of all national institutions, maintaining always, that every human fabric or establishment was subject to that decay and corruption, which lapse of time would necessarily produce.

“ Thus have these Ministers, who have hitherto been controlled in nothing, brought the nation from the upper step of its greatness down, by rapid degrees, to the lowest, where we now stand, and are looking up with doubts, whether we still possess virtue, public and private, sufficient to carry us up the steep and rugged hill we have in view, and which must be climbed.

“ Is there any one, to whom it need be said, that this chain of disasters can no more have fallen out by chance, and the common fate of war, than the beautiful globe we walk on could have been produced under an Epicurean system, by a fortuitous concurrence of an infinity of atoms?

atoms? No, my Lords; let us not condemn chance for our situation, nor for our sufferings: the Ministers are before you who brought you hither. Your Lordships have to this day given them your support: many of you, I doubt not, from laudable motives; and, if you could divest yourselves of false notions of delicacy, would, I am persuaded, profess that you had been misled, and would hasten the more to do all the good of which you are so capable. The confidence that has hitherto been given, from whatever motives proceeding, has proved fatal—Wisdom is at no time more conspicuous, nor more amiable, than in the acknowledgment of error. But all support given to the same Ministers, from this moment, the public has a right to consider to be given with open eyes, and therefore to involve the person equally with the Minister, in the guilt of every future fatal project.

“ As to myself, I solemnly protest, that no consideration, that the world can offer, would stand in competition with the comfort

fort I feel; that so far from having abetted the pernicious counsels which have brought on the downfall of the empire, I have, to the best of my little ability, endeavoured by every constitutional means to prevent them,

“ Thus have I discharged my duty to the King, to my Country, and to myself; for I was early persuaded that a perseverance in these pernicious measures would endanger the Crown itself, injure or overthrow the Constitution. I would leave every man without excuse, who, foreseeing the gathering storm, did not exert himself to avert the dreadful consequences.

“ If this motion is to be received, at this alarming period, with the same cold indifference which has been shewn by the House in days less disastrous; and, if I see an unconstitutional confidence, become now by events infinitely more unconstitutional, still continued to the same degree towards Ministers, after so evident proof of their repeated misuse of it—for one, I shall not

think it necessary for myself to trouble your Lordships, in that case, any more. Before I retire, to fortify my own mind against the calamities which are fast approaching, and to prepare my family for that which they will probably have to undergo, I shall think it to be a duty incumbent on me, to lay before my Sovereign the reasons for my conduct; flattering myself that I shall be allowed that gracious hearing, which His Majesty has so often given formerly to one, from whose tongue he never heard but the dictates of the heart as sincerely as they are now delivered to your Lordships."

CHAPTER II.

DUKE OF LEEDS.

Character. Extract from his Tract on the American War. Disapproves of that War. Made Secretary of State. His Reasons for resigning.

WITH the most amiable and accomplished manners of a gentleman, his Grace has shewn that he possesses the talents of a writer and a politician.

At the beginning of the American War, the Duke wrote a pamphlet entitled, "A Short Hint, addressed to the candid and dispassionate, on both sides the Atlantic." The following short extract will sufficiently shew the object of it.

"The idea of a land war [with America] seems to be impolitic, from the nature and extent of the country; and I conceive, though our troops may be suc-

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cessful,

cessful, their victories cannot be rapid. The expence, at all events, must be enormous; the success I think doubtful. The navy, in my opinion, seems the only proper instrument to carry on the war with, if hostilities *must* continue.

“ With regard to the great question of right, I am clearly of opinion, that colonies, from their nature, must be subject to the mother country, and consequently controulable by the great legislative authority of the parent state, in whatever hands such authority may be lodged. And I conceive it a dangerous doctrine to admit, that the Crown may claim the allegiance of millions of British subjects, independent of, and unconnected with, the two other constituent parts of the legislature. Such is my firm idea with regard to the legislative authority of this country over its colonies. And I am no less fully convinced, that the measure of levying taxes in so distant a part of the empire, contrary to the almost unanimous opinion of the people proposed to be taxed;

was an ill-advised, inexpedient, and most impolitic step on the part of government.

“ Let the ablest men of both countries join in the pursuit of reformation; let party for once give way to public good. If the Americans, coolly deliberating, produce any grievances under which they labour, let them be remedied. Should a state of total independence prove at last their object, (which I flatter myself it is not) I know no remedy: give them up. But if they wish no more than a more easy dependence on the mother country, indulge them with it; the more easy their situation, the more beneficial must they be to Great Britain.”

But although his Grace was for the war in the commencement of it, he afterwards changed his opinion. He saw the impracticability of carrying it on, and he saw, with indignation, the misconduct and imbecility of the Ministry. His Grace was appointed Chamberlain to the Queen in 1777, which he resigned at the end of the

year 1779, because, as he himself stated, he did not think it decent to hold a place when he found himself under the necessity of opposing the measures of government.

In the debate in the House of Lords, on the eighth of February 1780, his Grace stated his reasons for resigning; which were his disapprobation of the American war, and of the conduct of the Ministry in carrying it on: the particulars of which the reader will find in the debates printed in the Parliamentary Register of that year.

Upon the change of the Ministry at the end of the year 1783, his Grace was appointed Secretary of State, for the southern, now called the foreign department; but upon the dispute with Russia, concerning Ockzacow, in the spring of 1791, his Grace not approving of Mr. Pitt's conduct in that affair, resigned his employment; and stated in the House of Lords, as he had done before, the causes of his resignation. They were, briefly, these;--- In the negotiation for peace between
Russia

Russia and the Porte, the British Ministry had insisted, that Russia should restore Ockzacow to the Porte. The Court of Petersburg peremptorily refused to accede to this condition; upon which the British Ministry ordered a fleet to be immediately equipped, in order to compel Russia to a compliance with their demand. A war with Russia was on the eve of breaking out. But after two months consideration, the Ministry abandoned the dispute concerning Ockzacow, and disarmed the fleet, which at that time was ready for sea. Upon this point, the Duke of Leeds differed and resigned. The independence of his mind would not permit him to accommodate both ways; or, as he himself stated it, "If it was right to abandon Ockzacow, it was wrong to arm---if it was right to insist upon Ockzacow, it was wrong to disarm."

The candid and open manner in which his Grace stated the causes of both his resignations, forms an honourable trait in his character. This laudable example ought

to be followed by all the great Officers of State whenever they think proper to resign their employments. The nation has a right to know their reasons; and when those reasons are declared by themselves, as in the case of the Duke of Leeds, the declaration prevents the propagation of unfounded opinions, and the charge of sinister motives.

CHAPTER III.

DUKE OF DORSET.

*Poems of the Sackville Family. Poems of
Lord Nugent.*

THIS noble Duke has more than once recommended the compilation of a work, that would undoubtedly reflect much honour upon his ancestors; which, however, no person has yet undertaken. This is a collection of the Poems written by the Sackville family. These poems his Grace wished to see divided into three books, viz.

The first book to contain the poems of Lord Buckhurst.

The second book to contain the poems of Charles Earl of Dorset.

The third book to contain the poems of the late Earl of Middlesex.

Every

Every person acquainted with the progress of political literature in England, will admit, that the work would exhibit a fine series of ancient, middle, and modern poetry. The two first books may be obtained with tolerable exactness from Cogan's and Lintot's editions of the Minor Poets; but who can collect the last? They are fugitives, and must be obtained from such individuals as happen to possess and to know them; and who, perhaps, are not easily discovered. The late Lord Nugent's poems, which are said to breathe the true Horatian fire, lie in the same state; and are at this time, probably, more than half unknown. The descendants, or relatives, of these noble authors, are the only persons competent to perform these acts of literary justice.

CHAPTER

CHAPTER IV.

DUKE OF RUTLAND.

His Tracts. Solicits Lord Lonsdale to bring Mr. Pitt into Parliament. Liberality of Lord Lonsdale. Observation.

THIS noble Duke, while at Cambridge, wrote two pamphlets. One was called "An Essay on the Mortality of the Soul." The other was entitled "A Defence of "Modern Adultery." Neither of them were ingenious; but they are sufficient to rank his Grace amongst noble authors,

The only circumstance of his juvenile merits (for he died while a young man) that can with propriety be noticed here, is, that his Grace was accidentally the obtainer of Mr. Pitt's first feat in Parliament. When Mr. Pitt failed in his first attempt upon the University of Cambridge, he had no prospect of succeeding elsewhere. A day or two after this failure, the Duke
of

of Rutland met the Earl of Lonsdale (then Sir James Lowther) in St. James's-street, and immediately accosted him, with asking his Lordship, as a favour, if he could possibly make room in any of his Boroughs to bring his young friend Mr. Pitt into Parliament, who had just lost his election for Cambridge. Lord Lonsdale, who had always done these things in the most liberal manner, without stipulating any conditions in the manner of voting, (as with Governor Johnstone and others, whose votes he never restrained) complied with the Duke's request, and brought in Mr. Pitt for Appleby, at the general election in the year 1780.

If this accidental meeting in the public street had not happened, it is probable that Mr. Pitt had not been in Parliament, or at least not for some time.

And Mr. Pitt in return, made Sir James Lowther Earl of Lonsdale, and the Duke of Rutland Lord Lieutenant of Ireland.

CHAPTER

CHAPTER V.

HORACE WALPOLE, EARL OF ORFORD

Account of two Political Tracts written by him.

Lord Bute's Intention of taking away his, and other Patent Places. His Letter to his Constituents.

THE only notice that can, with propriety, be taken in this work, of this literary and noble Lord, is concerning two political tracts, written by his Lordship.

The first tract was entitled, "The Opposition to the late Minister vindicated." The pamphlet was written in the autumn of the year 1763. "The late Minister," was the Earl of Bute. Being written in the hour of indignation it may be supposed to be animated; and it may be remarked, that it is the most spirited of his Lordship's political productions. On this account, as the tract is very scarce, the reader may not be displeased with an extract from it; particularly

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larly of that part which relates to public measures.

The first of these measures was the peace of Paris, concluded in the month of February, 1763.

The next was the extension of the excise laws to the makers of cyder and perry.

As these were the prominent features of the Earl of Bute's administration, the reader will not be displeased with seeing the Earl of Orford's opinion of them.

“ The arguments, says his Lordship, against the terms of the peace, lie in a very narrow compass. The primary object of the war [Canada] had been in our hands three years before the peace was concluded. The enemy had obstinately protracted an unsuccessful war, at an amazing expence to us. Might we not equitably hope to avail ourselves of some of the successes we have had since the acquisition of Canada, and to reimburse ourselves in part, by retaining one
of

of the valuable islands, instead of reimbursing the enemy, by surrendering both, better conditioned than we found them, and after the subjects of France had enriched themselves, by sharing in the benefits and privileges belonging to the British planters? Was it the object of our counsels, and an employment fit for our arms, to conquer those islands, in order to take the subjects of France into our protection, and secure their trade against the British men of war and privateers?

It was a question two or three years before, whether Canada or Guadalupe should be retained by us, and the question was thought an embarrassing one. Was not that question changed by the state of the war, as it stood last year, 1762? Were all the subsequent conquests nothing? and was it *unjust* in the wisest men of this nation, towards their Sovereign or their country, to expect that something like an indemnity should arise from the conquests made with so much blood and treasure?

“ The account between us and our enemies was very short and intelligible. France
took

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took Minorca ; Spain took nothing. I am not disposed to inflame my countrymen, by reciting all that we have taken. Our national glory begins to be an obnoxious subject at home. The friends of the Ministry forbear calling the last a GLORIOUS war, which is its true description ; they chuse rather, in justification of the peace, to call it a *bloody* and *expensive* war, which is no more descriptive of this, than of any the most ignominious war.

“ The treaty of Utrecht has been complained of for many years, and very justly. But what was the state of the account between us and the French at the time of that treaty, if compared with our late superiority over that broken, disgraced, dispirited nation ? They could not have carried on the war longer without extreme difficulty ; and if they should renew it sooner than their friend, our late Minister, may expect, will it not be with the ammunition which they have had the dexterity to draw from this treaty of peace ?

“ It is a poor defence of the measure, to
charge

charge the opposition to it with undue and indirect motives, amidst so many *direct* and *honourable* motives to influence the opposers. Before the matter was considered in Parliament, the general dislike of it was imputed to the private personal interest which some commercial men had in the war, and which would induce them to exclaim against *any* peace. There might be such men and such motives. But were there not many also, who had a private personal interest in the support of the Minister, and consequently in *any* peace? And, after deducting the men under each of these descriptions, was there not a large number of disinterested men remaining, who judged upon the plain state of the case between us and the enemy, that the national honour and interest were not sufficiently consulted in the terms of peace?

“ When the opposition was made in Parliament, there being no pretence for imputing it to motives of immediate interest, other motives equally dishonourable were assigned, lest the nation should form the obvious judgment, that men of the first
VOL. I. E rank,

rank, of the greatest understanding, of independent wealth, and of known attachment to the family on the throne, as well as to the interest of their country, opposed the peace upon right motives.

“ They were called a **FACTION**, and the word has been trumpeted about the kingdom. But mere words are a feeble support to a public cause; and invectives are, in this case, the most impotent of all words. If an association of *wise* and *disinterested* men, for the purpose of delivering the King and Constitution from the dangerous ambition of a fellow-subject, be a faction, then the opposers of the late Minister deserve that name, and will be proud of it. But if a party, composed of men of different views and principles, united by manifest motives of interest, and conspiring to aggrandize one man, against the known interest of the King, at the hazard of the Constitution, and at the expence of public tranquillity, be a **FACTION**, the name will return naturally to its original proprietors, notwithstanding the virulence with which they cast it from themselves upon other men.

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“ The next article of impeachment against the opposition is, their having opposed an extension of the excise laws. The writer [meaning the writer of a tract, entitled, “ Considerations on the present dangerous “ Crisis,” which was ascribed to Mr. Owen Ruffhead, editor of the Statutes, and to which this tract, by Lord Orford, was an answer] introduces it with confessing the tax upon cyder to have been *precipitate, impolitic, and inadequate*; pretty heavy charges against a tax, which it has been usual to contrive with *deliberation, wisdom, and a nice estimate* of the sufficiency of it for the payments to which it is appropriated.

“ He confesses moreover, by referring us to the act of William the Third, that this tax is an EXTENSION of the excise laws; for that act taxes only the maker of cyder from *bought* fruit; this taxes the maker *in general*. He would have it understood, that there is but little difference in this. The insinuation is very unbecoming a writer, who complains of want of candour and integrity in the writers on the other side. The difference is, that the makers from

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bought fruit are very few in comparifon ; and the makers *in general* are, the Peers, Gentlemen, Freeholders, and Farmers of fix or feven counties.

“ There is befides a material difference between the maker of cyder from bought fruit, and the farmer who grows it. The maker from bought fruit can chufe, whether he will buy fruit, and be a cyder-maker. He knows upon what terms and conditions he fubjects himfelf to excife laws. Whereas the farmer, who grows it, is of courfe, and, without any choice of his own, become fubject to excife laws, or he muft forego the produce of his farm. .

“ It was with this attention to liberty and equity, that the duty upon beer and ale was made payable only by him, who fells it. Every man may brew as little as he pleafes. Whereas the apple-grower muft make more cyder, than for his own confumption. The perifhable nature of his fruit leaves him no choice. It has been fuggelted, that this tax may create cyder-makers, who, by buying the apples, may exempt the farmer from the vifitation of
4 excife-

excisemen. A blessed effect indeed ! The farmer of a cyder farm is to have the alternative, of either subjecting himself to an oppression, to which no other farmers are subject, or of disposing of his *perishable* fruit to a monopolizing cyder-maker, who will be enabled, by the terrors of this tax, and of the mode of levying it, to bring the farmer to his own terms.

“ The excise upon, and composition for, malt is no grievance, compared with this excise upon cyder. It is the maltster's own free choice to subject himself to it. He is under no necessity to turn maltster for the sake of his barley ; for the barley will not perish immediately ; and if the demand for it at home should not answer his expectation, he has a chance of finding a demand for it abroad, and is encouraged to export it, by a bounty. Barley therefore is a marketable commodity ; apples are not till made into cyder. They are not fit for exportation, nor will they admit of delay in the sale. The maltster has another chance. He may convert his barley into spirits, and has in that case too the advantage of a pre-

mium for exportation. Cyder may be converted into spirits; but there is no premium for the exportation of that species of spirits. So that every argument, which has been drawn from the case of beer and of malt, is foreign to the objections, which have been made to this excise upon cyder.

“ Our author indeed acquaints us, that this is no new method of taxation; for the duty on mead and other liquors is, by several acts, made payable by the *maker generally*. There would be some weight in this plea, if he could name the farm, which produces nothing but honey, or if he could prove, that the inconveniences arising from the duty upon mead, and those other liquors, are in any degree so extensive, as those arising from this new excise upon cyder.

“ The history, which he gives us of the taxes on cyder, is a very indifferent apology for this new tax. The act of Charles the Second, he tells us, having laid a duty upon the *retailer*, the act of William the Third, intrenched farther on the liberty of the

the subject, by laying the duty upon the maker of cyder from *bought* fruit for sale. *Where* then, says he, is the new encroachment on liberty? *Where* is the additional badge of servitude? It is strange, that he should repeatedly say, *Tell me where*, for he sees it in his next sentence. The duty is now payable by the maker *generally*, that is, by the Peers, Gentlemen, Frecholders and Farmers of six or seven counties, who *never were before, and are now subjected to* EXCISE laws. Great as the authority of our glorious deliverer is, it is here very invidiously quoted. The friends to his memory are so, because they are friends to liberty, and are not so implicitly devoted even to him, as to concur in superadding a new encroachment on liberty, to a new encroachment of the same kind in his reign.

“ The author seems to triumph, when he mentions the composition of five shillings per head, to exempt those, who make cyder for private consumption, from the visitation of excise officers. But is it the case of any man, who rents a cyder farm, that he makes no more cyder, than for private con-

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sumption? We may judge from the quantities consumed all over England, and the quantities exported, how small the private consumption of the farmer is, in proportion to the quantity of apples he grows. But to shew the futility of this argument more glaringly, let us suppose the growers of wheat to be made liable to an excise for their wheat; would it be a remedy adequate to the evil, or any consolation to the farmers, to allow them a composition for the quantity of wheat consumed in their own families?

“ After reasoning so very answerably, in support of the excise upon cyder, our author concludes, as might be expected, with an assertion of his own, that there is no reasonable ground for the violent clamour made against the mode of collection, *unless cyder makers have a right to more liberty, than the makers of other liquors.* I answer, with an appeal to truth and common sense, that apple-growers have a right to enjoy as much liberty, as barley-growers, and that they are necessarily cyder-makers, because they are apple-growers; whereas the barley-grower

grower is not necessarily a maltster, or a brewer.

“ But this is only a small fallacy of our author's; he commits a greater, when he affirms, that the bill ~~passed~~, without any application from the counties aggrieved, or supposed to be aggrieved. It is well known with how much precipitation the bill passed; with so much, that this very advocate for it acknowledges it to have been *precipitate*. The counties aggrieved had not time to instruct their members in form, or to petition Parliament. But if letters from the gentlemen and farmers in those counties, to Members of both Houses, are any evidence, volumes of them might be produced to prove, how general the discontent was, before the passing of the act; and the thanks and instructions, which some gentlemen have received since, abundantly shew, how early the opposition without doors began, and how vigorously it still subsists.

“ It may be candid to suppose these fallacies undesigned, or perhaps fallacies may
be

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be considered as the privilege of an infirm cause. But what shall we say to a writer of decency and of apparent authority, who ventures to assert an absolute falshood, which this gentleman does, in saying, that the bill passed ~~through~~ the House of Commons without a division. I would not in direct terms charge him with a falshood, if I could not appeal to every Member of that honourable House, whether there were not at least six divisions upon it?

“ The reader sees upon the whole, that this tax is a manifest *extension* of the excise laws, to persons, who were not subject to them before, and are by this law put upon a worse footing, than their fellow subjects in other parts of the kingdom, to whom the excise laws do not yet extend. It was therefore liable to all the opposition and clamour it has met with, even if we could suppose the Administration, who projected it, to have been wise and favourable to liberty.

“ It is a feeble attempt to mislead the reader,

reader, when, instead of a solid manly defence of the tax, we are amused with trite declamations about the malice of party, and with inflammatory invectives against other taxes, which are paid without murmuring, and constitute a considerable part of the public revenue.

“ The tax upon beer, which these impotent candidates for popularity tell us, in a florid way, is *cruelly wrung from the briny sweat of industry*, was, at the time, the best tax, that could be contrived. If I remember rightly, the brewers intended to impose it, if the Parliament had not. It operates so insensibly, that the people, who murmured at it, begin to be reconciled to it; and it produces so considerable a revenue, that it is a great act of infidelity towards Government, to throw out, in a seemingly authorized pamphlet, insinuations against a burden, which it was necessary to impose, and which the late Minister had not skill to remove.

“ He had thoughts of purchasing popularity

larity by the sacrifice of this piece of national strength ; and, finding it impossible, stumbled, in his reveries, upon a tax less profitable and more obnoxious. He made one bold effort for popularity, in passing this very bill, by professing an *abhorrence* of excise. His apologist in the pamphlet before us imitates him. I am not ashamed to repeat my words, that it is unfaithful, and unkind to Government, in a servant of the Crown, to declaim against the method of collecting the most valuable branch of the revenue, unless he had a more unexceptionable method to propose ; and it was much too thin a veil to throw over this cyder bill, which extends the oppressive part of that method of collection to almost every gentleman and farmer in so considerable a part of England.

“ I say of ENGLAND, for Scotland is not at all affected by it. Most of the counties in South-Briton make some cyder, though it is the peculiar produce of only six or seven ; but SCOTLAND makes none. It would have been too glaring an act of partiality,

tiality, to have laid a general tax upon Great Britain, and by an express proviso to have exempted Scotland from paying it. A wiser and more decent expedient was hit upon; a heavy burden is laid on South-Britain, which shall not reach to Scotland; that happy land of Goshen shall not touch the burden with one finger, and shall be exempted from all the plagues and vexations, which fall upon her united sister, both as to the load of the tax itself, and as to the oppressive mode of collection, which aggravates the burthen infinitely beyond the natural weight of it.

“ Indeed the Scotch nation had a right to this piece of partiality from their noble countryman, in compensation for all the injury which his ambition has done them. They had a just claim to the affection of their fellow-subjects in the South, having behaved like Englishmen, in the course of this war; and their behaviour would have compleated the union, and have extinguished all difference between English and Scotch, had not his ambition unseasonably inter-

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interposed, and excited jealousies, which have put back the union for twenty years at least.

“ These were the principal of the late Minister’s measures, which were opposed in Parliament ; and that the opposition was not *factionous*, appears from one circumstance, which deserves to be mentioned to the honour of the opposers. Their dislike of the whole of his Administration, of the foundation and the conduct of it, did not influence them to oppose the necessary business of Government, as has been the practice of former oppositions. They were too well affected to his Majesty to do this ; and though it may be said, that their small number would have rendered it ineffectual, yet that consideration did not weigh with them, when, impelled by the best principles, they opposed the extravagant panegyric upon a peace, which they could not approve, and the oppressive tax upon cyder.”

It was natural for his Lordship to write
with

with a spirit beyond his usual equanimity, on these subjects. He had seen the sweeping hand of the Earl of Bute, discarding throughout every department, every friend of the late Whig Ministry. And he must have felt upon the occasion, as every other person did, who was a friend to the family on the throne. In the general sweep that was made by Lord Bute, this noble Lord was excepted, not by any partiality, but by a constitutional interdiction to the power of the Minister. Lord Orford held his places by patent.

The patent places, which were held by different persons, gave Lord Bute some concern; because he found that he could not instantly take them away. And it is certain, that he had an idea of committing an act of violation, in this matter. He consulted his friend Lord Mansfield upon it. And thus much we know, that Lord Mansfield did not indeed say, that it was *lawful* to take away the places held by patent; but he said, that he [Lord Bute] *might* take them away, and if the *right* to do so was

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was disputed, the *right* might be *tried* ; which gave rise to Sir Fletcher Norton's expression, " Do the thing first, and justify " it afterwards." The intended question was, whether the patents, granted by the *late* King, did not expire with the *death* of the King? The question however was dropt. It is impossible to say, whether fear or prudence was the cause of it.

The second tract was entitled, " A Counter Address to the Public, on the late " dismissal of a General Officer." The occasion of it was this : On the great question relating to General Warrants, which was debated in the House of Commons in the month of February, 1764, General Conway voted against the Ministry ; for this vote he was dismissed from the army, and from his place of groom of the bed-chamber to the King. (See more upon this subject in Chapter VIII.) This conduct of the Minister was vindicated in a pamphlet called, " An Address to the Public on the late dismissal of a General Officer." In answer to this pamphlet, Lord Orford wrote his " Counter

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“Counter Address.” Both the pamphlets are printed in the “Collection of Scarce Tracts,” for J. Debrett.

In the year 1764, his Lordship wrote a few political papers in the London Evening-Post; and in the year 1766, a few in the Public Advertiser.

At the general election in the year 1768, he declined his seat in Parliament. His letter to his constituents upon that occasion, never having been printed in London, the reader will not be displeased to see it here.

Copy of a Letter sent by the Honourable Horace Walpole, to William Langley, Esq. Mayor of Lynn, in Norfolk.

“Arlington-street, March 13, 1767.

“S I R,

“The declining state of my health, and a wish of retiring from all public business, have, for some time, made me think of not offering my service again to the town of Lynn, as one of their Representatives in

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Parliament. I was even on the point, above eighteen months ago, of obtaining to have my seat vacated by one of those temporary places, often bestowed for that purpose; but I thought it more respectful, and more consonant to the great and singular obligations I have to the corporation and town of Lynn, to wait till I had executed their commands to the last hour of the commission they had voluntarily intrusted to me.

“ Till then, Sir, I did not think of making this declaration; but hearing that dissatisfaction and dissensions have arisen amongst you, (of which I am so happy as to have been in no shape the cause) that a warm contest is expected, and dreading to see in the uncorrupted town of Lynn what has spread too fatally in other places, and what, I fear, will end in the ruin of this constitution and country, I think it my duty, by an early declaration, to endeavour to preserve the integrity and peace of so great, so respectable, and so unblemished a borough.

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“ My father was re-chosen by the free voice of Lynn, when imprisoned and expelled by an arbitrary Court and prostitute Parliament; and from affection to his name, not from the smallest merit in me, they unanimously demanded me for their Member, while I was sitting for Castle-Rising. Gratitude exacts what in any other light might seem vain-glorious in me to say, but it is to the lasting honour of the town of Lynn I declare, that I have represented them in Two Parliaments without offering or being asked for the smallest gratification by any one of my constituents. May I be permitted, Sir, to flatter myself they are persuaded their otherwise unworthy Representative has not disgraced so free and unbiassed a choice?

“ I have sat above five and twenty years in Parliament; and allow me to say, Sir, as I am in a manner giving up my account to my Constituents, that my conduct in Parliament has been as pure as my manner of coming thither. No man who is, or has been Minister, can say, that I have ever

asked or received a personal favour. *My votes have neither been dictated by favour nor influence, but by the principles on which the Revolution was founded, the principles by which we enjoy the establishment of the present Royal Family, the principles to which the town of Lynn has ever adhered, and by which my father commenced and closed his venerable life.* The best and only honours I desire, would be to find that my conduct has been acceptable and satisfactory to my Constituents.

“ From your kindness, Sir, I must intreat to have this notification made in the most respectful and grateful manner to the corporation and town of Lynn. Nothing can exceed the obligations I have to them, but my sensibility to their favours: And be assured, Sir, that no terms can outgo the esteem I have for so upright and untainted a borough, or the affection I feel for all their goodness to my family and to me. My trifling services will be overpaid, if they graciously accept my intention of promoting their union and preserving their virtue; and

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*though I may be forgotten, I never shall or
can forget the obligations they have conferred
on,*

Sir, their and your,

Most devoted humble servant,

HORACE WALPOLE."

CHAPTER VI.

**DR. JOHN BUTLER, LORD BISHOP OF
HEREFORD.**

*His Address to the Cocoa Tree. Consultation
on a Standing Army. Considerations on
Lord Bute's Administration. Account of
Mr. Legge.*

THIS Reverend Prelate has shewn himself to be as able a politician as he is a divine. He was early attached to the Whigs, whose conduct and principles, when forced from the Government by Lord Bute, in the year 1762, he defended with zeal and ability. At that time was published a tract of some celebrity, which was considered to be the manifesto of the Tory party, entitled, "A Letter from the Cocoa-Tree to the Country Gentleman." It consisted chiefly of a severe arraignment of the conduct of the Duke of Newcastle, the Duke of Devonshire, and the Duke of Cumberland; relative to their forming an opposition to the Earl of Bute. As this pamphlet might be said to contain

contain the creed of the Tories at that time, Dr. Butler judged it to be not less proper than necessary, to oppose to it the creed of the Whigs, in another tract, which he entitled, "An Address to the Cocoa-Tree; from a Whig." The closeness of the argument, the strength of the reasoning, the temper and elegance of the language, were all greatly admired. He shewed the principles and conduct of the Whigs to be strictly constitutional: and he vindicated the proceedings and opinions of his friends, in a manner so excellent and masterly, as to reflect not less honour upon his own talents, than upon their characters. It is printed in the first volume of Scarce Tracts, for J. Debrett.

His next tract was called, "A Consultation on the Subject of a Standing Army, held at the King's Arms Tavern, on the 28th of February, 1763." The arguments for and against the measure are well drawn, and apply with peculiar propriety to the period of time in which it was written.

In the same year he published another tract, which was entitled, " Serious Considerations on the Measures of the present Administration." This was the Administration of the Earl of Bute, while his Lordship was First Lord of the Treasury.

" One of the great outlines of the present Administration, he says, and which has been carried to a degree unknown since the reign of Charles the Second, is an open and declared profession of encreasing the power of the Crown, by creating influence and dependencies upon it in both Houses of Parliament. In the year 1711, when the Tories were endeavouring to overturn the Whig Administration, that had reduced the power of France so low, and were projecting the infamous treaty of Utrecht, Burnet says, ' they finding the House of Lords could not be brought to favour their designs, resolved to make an experiment that none of our Princes had ventured upon in former times; a resolution was taken of making twelve peers at once.' What was the conduct

duct of the present Minister under similar circumstances? He advised the creation of sixteen peers, not indeed at once, that would have been too explicit a declaration of his motives, but all in the space of two years; and not content with this, he likewise advised the giving pensions to a great number of that House, under the denomination indeed of Lords of the Bedchamber; but as the number of those Lords was increased, during the present reign, from twelve to twenty-two, the fact is, that by whatever name they are called, the King has so many more servants in his pay, in that House, and the Minister has the rod of deprivation waving over their heads, which fell most heavily upon those who presumed to exercise their freedom of voting against what he recommended. But in the other House, and where it is more material, this measure was carried much further: we are informed from history, that, from the time of the Revolution, it has been the characteristic mark of those who opposed any increase of power in the Crown, to contrive by laws, and every other method, to prevent

prevent the influence of the Crown in that House. Several acts of Parliament have been passed, to limit the number of officers, who received their places from the Crown, to have seats in the House of Commons, and one particularly during the Whig Administration of Queen Ann ; which declares, that no person possessed of an office, created after such a period, should be capable of having a seat in that House : and this was afterwards enforced by another of the first of George I. that restrained persons having pensions, during pleasure, from sitting in the House of Commons. These laws were passed in order to be a restraint on the Crown ; they are now in force, and mean to provide for the liberty of the people, by preventing the Crown from creating a dependence upon it in its representatives : but, like other human institutions, they were evaded : when a Minister shall presume to advise, in the teeth of these acts of Parliament, the creation of such a number of Grooms of the Bedchamber, Clerks of the Green-cloth, and other officers of the household, each with a salary of five hundred pounds

pounds per annum, as to be double the number of those of his late Majesty ; and when some gentlemen have been removed from these employments with pensions, to make room for Members of the House of Commons, that the law might be only evaded, not openly violated ; and when we see gentlemen of the first fortunes, and who, through the two last reigns, prided themselves in their independency, eagerly and meanly thrusting themselves into this pitiful pension list ; I say, when we consider these things, where is the security of the laws, or upon what principles of the constitution can these measures be defended ?

“ I shall now consider the very great intended encrease of the army. At the conclusion of the treaty of Aix-la-Chapelle, the whole force demanded by the Minister, for the defence of this Island, Ireland, Gibraltar, Minorca, the West-Indies, and the vast tract of frontier in America, was only *forty-nine* regiments, besides the guards. What now is our situation, compared with the present circumstances of France ? France is by the war reduced

reduced to a very low ebb ; our possessions, by the renunciations of the peace, are not materially encreased, except in North America, where the French are entirely extirpated, and we have no other boundaries to our colonies, than uninhabited wilds and endless forests—What is the number of standing forces now proposed ? The whole of the present army for half a year ; and then to be reduced to *seventy-five* regiments of foot, exclusive of the guards ; notwithstanding the addition of a militia of thirty thousand men. What can the Minister intend by so large a force ? Security against the French ? No. What then ? Is it to make an ill use of their power, and sacrifice the liberty of this country to a standing army ? I abhor the thought ; his M. would never suffer it ; the officers of the army would refuse to concur in it. What then remains, except that by the encrease of Colonels, Lieutenant-Colonels, Majors, with all the other military terms of command, the Minister may create such an additional dependency upon the Crown, in the Members of the two Houses of Parliament, that the
measures

measures of Government may be conducted with greater ease ; and no opposition think it worth their while to disturb the quiet of the Sovereign, or endanger the security of his Minister ?”

His Lordship's last tract was, his “ Account of the Character of the late Right Honourable Henry Bilson Legge.” Including his correspondence, taken from Mr. Legge's papers, with Mr. S. Martin, concerning the Hampshire election, in the year 1759. This is also printed in the Scarce Tracts.

CHAPTER VII.

THE RIGHT HONOURABLE CHARLES TOWNSHEND.

His Defence of the Minority on the Question relating to General Warrants; affects Mr. Grenville. Defence of the Majority. Letter on Libels and Warrants. Reply to the Defence of the Majority, by Sir William Meredith. Other Tracts written by Sir William Meredith. Mr. Townshend's State of the Nation.

THIS Right Honourable Gentleman was the author of a spirited and celebrated pamphlet, written in the year 1764, entitled, "A Defence of the Minority in the House of Commons, on the Question relating to General Warrants." The subject is sufficiently explained by the title. The pamphlet was universally read, and highly esteemed, not more for the importance of the question, than the elegance of the composition. Mr. Grenville (the Minister) observing the impression it made upon

upon the public, expressed his wish to see it answered. This task was undertaken by Mr. Charles Lloyd, his private secretary; whose answer was called, "A Defence of the Majority." The friends of the Ministry were at no pains to conceal the mint from whence the answer issued. This answer gave rise to one of the best, most able, and most constitutional legal tracts, that has been written in the English language, since the days of Lord Somers. It was entitled, "A Letter concerning Libels, Wrants, the Seizure of Papers, and Sureties for the Peace or Behaviour; with a View to some late Proceedings, and the Defence of them by the Majority." The Ministry did not attempt to answer this work. It was invincible. Lord Mansfield felt himself severely hurt by it, and he prosecuted the printer. [See more under the head of Lord Mansfield.] The York family were also much hurt by it, on account of the character given of Lord Hardwicke, and they published some letters in the newspapers, in vindication of that Lord. [See the article in the appendix marked B.]

This

This valuable law tract was very generally ascribed to Lord Camden, and Mr. Dunning; sometimes distinctly, and sometimes united. But a learned and respectable Master in Chancery, was not entirely ignorant of the composition.

The defence of the Majority drew forth a reply from Sir William Meredith; it was called, "A Reply to the Defence of the Majority, on the Question relating to General Warrants." As this gentleman had been the original mover of the question in Parliament, this reply came with particular propriety from him. He states his motives for bringing the question forward; which were, for the security and protection of the subject. The motion was in these words, "That a General Warrant for apprehending and seizing the authors, printers, and publishers of a seditious libel, together with their papers, is not warranted by law." If the question upon this motion had been carried, he says he intended to have followed it by another, viz. "That such warrant, if executed, is a violation
" of

“ of the rights of the subject ; and in case
“ of a Member of this House, is a breach
“ of the privilege of this House.”

[A few years afterwards, Sir William Meredith brought a bill into the House of Commons, to repeal a clause in the Nullum Tempus act. This was occasioned by the great cause between the Duke of Portland and Sir James Lowther. One of the principal debates on the bill was on the 27th day of February, 1771 ; of this debate, Sir William Meredith, with the assistance of the Hon. Constantine Phipps, and another gentleman, wrote a very accurate account ; which has since been printed in the Parliamentary Debates of that year. His best literary performance, and upon which he bestowed most labour and attention, was a tract consisting of about twenty sheets in quarto, entitled, “ Historical Remarks on
“ the Taxation of Free States.” It was an answer to a tract that had been published under the patronage of the Court and Ministry, entitled, “ An History of the Colonization of the Free States of Antiquity.”

The point laboured at in the latter, was to shew that Great Britain was fully justified, by the precedents of antiquity, in her attempt to tax her colonies in America. Sir William refutes the whole of this assertion, doctrine and argument; and shews the author to be totally mistaken in all his premises. Candour must allow, that the "Historical Remarks," is not only a very learned, but a very able composition. It was never published to the world; he printed only about thirty copies, which he gave away.]

The Right Hon. Charles Townshend also wrote "The State of the Nation, in the years 1766 and 1767," being the period that he was Chancellor of the Exchequer. It consists merely of exact copies of the public accounts of those years.

CHAPTER

CHAPTER VIII.

MR. SERJEANT ADAIR.

His Tract on the Dismissal of General Conway; and on the Case of the Duke of Portland.

THIS Gentleman has been the Author of two tracts. The first was entitled, "Thoughts on the Dismissal of Officers, civil and military, for their conduct in Parliament." The learned Author admits that the Crown has a right to dismiss its servants, but thinks that the comparison which is often made, between this right of the Crown, and that which a master of a family possesses of parting with his servants whenever he pleases, is not just; if the servant of a subject is dismissed, he may get another place; but if a servant of the nation is dismissed, where can he go to? His services and his emoluments are extinct. "The matter of right," says the learned Serjeant, "being taken as an uncontrovertible principle, it may be proper

to enquire what kind of right this is? For there are rights which are called so only because they are not in a strict and legal sense, wrongs: rights which are consistent with the violation of the most tender and sacred regards of the laws of equity, honour and humanity. If it should appear that the right is of this kind, there is an ample field for discussion. It would be highly disrespectful to the wisdom of Government, to suppose that offices of trust were ever bestowed on others than such as had gained a title to them by their past services, or were expected to be serviceable in future; and if so, they are not to be considered as mere favours, as bestowed without regard to merit, and to be withdrawn at pleasure, without any reason given, and without cause or colour of complaint. It may be no violation of right, it may not be an unlawful act, so to withdraw them; but it may be contrary to the rules of equity or prudence. Taking it for granted, that such exercises of ministerial power are not to be looked upon merely as acts of power; but that the propriety, and

and even rectitude of them, are proper subjects of debate, I proceed to the examination of the following question---Whether it be equitable and politic to displace an officer, civil or military, solely for his conduct in Parliament? The first duty of every man who serves his country as one of its representatives in Parliament, is to consult the public good. All private obligations to a Minister, or even to his Sovereign, are of an inferior nature. To controul his exercise of private judgment, is to deprive him of that liberty without which he cannot discharge the duties he owes to the public. To punish him for making use of such liberty, is an implied denial of that independency which the constitution supposes him to possess: it is to declare war against the freedom of Parliament. The fear of being deprived of such emoluments as he enjoys from the Crown, in consequence of his opposition to measures which he thinks detrimental to the public, reduces him to the disagreeable dilemma of renouncing either his private interest, or the interest of his country.

try. The infliction of this punishment cannot be justified otherwise than by asserting the opposition to have proceeded from corrupt views; or at least from an error in judgment, that requires to be rectified by so violent a remedy. But who has a right to assert this? Is the Minister a proper judge, in a cause where he himself is a party? It may be said, that the same reasoning concludes equally against a Minister endeavouring to influence a member of parliament by any lucrative consideration at all. Indeed I am afraid it would be difficult to prove any measure of that kind strictly defensible. But there is a wide difference between tempting a man to be dishonest, and punishing him for being honest. The above reasoning holds, with peculiar force, in the case of that man who enjoys no advantages but what he has earned in the service of his country. Every officer in the army or navy, who has been advanced in the course of service, has a right to enjoy the dignity and emoluments consequent on his advancement, till he has forfeited them by some breach of his military duty, or

some crime lawfully proved. And if, without the allegation, or even pretence of any such misbehaviour, he be degraded from his honour, and despoiled of his income; his country, which is indebted to him for his services, and has cheerfully defrayed the expence of his rewards, beholds with a just indignation, a step that tends to quench the ardour, and check the emulation of all who are desirous of treading in the same honourable steps. It is a common thing for Ministers to entrench themselves behind the Royal Authority, to represent the opposition to them as an attack upon Government, and to brand all instances of it with the odious titles of disloyalty and disaffection. But in so doing, they are guilty of betraying the power that supports them, and excite just suspicions of their fidelity to the trust reposed in them. If a Minister lay claim to what even his Master has no right to, an unlimited acquiescence; his claim is unconstitutional; he has other views than the serving either his King or his country, and power is dangerous in his hands."

The other tract was entitled "Observations on the Power of Alienation in the Crown before the first of Queen Anne; supported by precedents, and the opinions of many learned Judges. Together with some remarks on the conduct of Administration respecting the case of the Duke of Portland." This pamphlet arose out of the case of the Duke of Portland with Sir James Lowther, now Lord Lonsdale. "Had this country," says the learned Serjeant, "remained in the same situation it has been in for the last fifty years; had public affairs gone on in only the usual course of Ministerial corruption on the one hand, and self-interested opposition on the other, I might regret in silence the depravity of the times, but should never have troubled the public with my ideas in print. But when we have beheld our Sovereign ever since his accession to the throne, in the hands of those who have done all in their power to alienate the affections of a loyal people from an amiable and virtuous King. When we have seen a successful and glorious war,

war, terminated by an inadequate and ignominious peace. When we have seen the odious and oppressive system of the excise laws wantonly extended. When we have seen a Member of the British Parliament, who seditiously dared to declare himself an advocate for the liberties of the people, driven into exile, and persecuted to outlawry, for publishing out of the House such observations on the speech of the Minister as have been a thousand times uttered in the House with impunity. When we have seen the liberty of the people invaded in the most daring and outrageous manner, by issuing general warrants, by illegally arresting the persons of his Majesty's subjects, breaking open their most private repositories, ransacking and carrying off their papers, and betraying their dearest and most important secrets to a set of lawless messengers. When we have seen, at a time in which the nation was loaded with one hundred and forty millions of debt, the public money squandered in prosecutions against the assertors of liberty, in places and pensions to our repre-

representatives to procure their sanction to such measures; and in bribing our electors to re-elect such representatives. In fine, when we have seen the baneful influence of a justly hated favourite spread its contagion through every successive Administration; and we still see the same influence giving birth to measures as subversive of the true interests of the Crown, as of the rights and liberties of the people; I should think myself equally deficient in my duty to my Sovereign and the community, if I did not endeavour to contribute my mite towards setting such measures in a just light, and exposing the authors of them to the detestation they deserve. The only means I have to contribute to this end is, by submitting to the public my ideas on the late most flagrant instance of the selfish and arbitrary disposition of the favourite. His taking away from the Duke of Portland an estate which has been seventy years in the possession of his family, and giving it to his own son-in-law, Sir James Lowther, is a measure which for some time

time past has very deservedly attracted the attention of the public; a measure, indeed, of a very extraordinary and alarming nature, and unexampled in the history of former times in this country."

These extracts sufficiently shew the learned Serjeant's regard for the constitution, and the correctness of his political opinions. But this is not the best part of his character. He is an able lawyer, and an honest man.

CHAPTER IX.

SIR GREY COOPER.

His two Tracts. Made Secretary to the Treasury under Lord Rockingham. Secures a Pension. Continues Secretary to the Duke of Grafton, and to Lord North.

THIS Gentleman, while resident in chambers in the Temple, had the good fortune to espouse the distinct political views of that division of the opposition, in the year 1765, which was known by the name of the Rockingham Party; who succeeded to office in that year in consequence of the refusals of Mr. Pitt and Lord Temple, grounded in what they considered the undiminished influence of the Earl of Bute.

When the negotiation for a change of Ministers was concluded, Mr. Lloyd, who had been Mr. Grenville's private secretary, wrote a small tract entitled "An
" Honest

"Honest Man's Reasons for declining to take any Part in the New Administration." To this pamphlet, Sir Grey (then Mr. Cooper) wrote an answer, which he called "A Pair of Spectacles for Short-sighted Politicians." Mr. Lloyd had asserted the continued influence of Lord Bute. Mr. Cooper denied the assertion. The new Ministry read this vindication with pleasure.

As soon as the arrangements were settled, Mr. Cooper wrote a second tract, which he entitled "The Merits of the New Administration truly stated." This tract was more ingenious than the first, and had the advantage of literary merit. But the best merit of it was, that it was a principal cause of recommending him to the situation of Secretary to the Treasury. But which situation, however, he did not accept without securing to himself an adequate pension in case of dismissal.

This conduct, if not absolutely necessary, was at least prudent; having then quitted

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the bar for a political office, he could not with propriety, in case of dismissal, return to it. But this act of prudence shews that he did not put much confidence in his own writing; for in his "Merits of the New Administration" he argues at some length upon the *permanency* of the new Ministry. This permanency proved to be no longer than one year. But although Lord Rockingham and the Ministry were turned out, after being in office only one year, yet Mr. Cooper continued Secretary to the Duke of Grafton, and to Lord North, until the year 1782.

CHAPTER X.

DR. THOMAS LEWIS O'BEIRNE, LORD BISHOP OF OSSORY.

Chaplain to Lord Howe in America, during the American War. His Defence of Lord Howe. His Political Papers, signed A Country Gentleman. History of Parliament. Considerations on the Riots in the Year 1780. Defence of Admiral Lord Keppel. Made Secretary to Lord Fitzwilliam, and an Irish Bishop.

DURING the Administration of Lord North, this reverend prelate was the author of several political pamphlets, and of a series of political essays in one of the public prints. He was chaplain to Lord Howe in the time of the American war, and attended his Lordship on that service. Upon their return to England, Mr. O'Beirne found that Lord Howe's character had been infamously traduced in his absence by the Ministerial writers in all those newspapers

newspapers which at that time were kept in the pay of the Ministry.

His first literary composition (at least the first that is known) was the defence of his noble friend. It was entitled "A candid and impartial Narrative of the Transactions of the Fleet under the Command of Lord Howe, from the Arrival of the Toulon Squadron, on the Coast of America, to the Time of his Lordship's Departure for England." There is prefixed to it a plan of the situation of the French and English fleets before New York at a very critical moment. The writer has certainly rescued Lord Howe's character from every obloquy that was attempted to be thrown upon it. From this true and accurate statement of Lord Howe's naval skill, in the most difficult and arduous circumstances, every naval gentleman has not less freely than warmly bestowed the highest eulogium on every part of his Lordship's conduct throughout that severe service. Undoubtedly this matter reflects not less honour on the

the author, than on the principal and patron. His next literary employment was a series of essays, or letters (which such papers are more usually called) in a daily newspaper. The letters were signed "A Country Gentleman." They were written and printed in the beginning of the year 1780, when the whole nation was much agitated by county meetings, associations, and committees, on the subjects of the American war, the corruption of Parliament, and the influence of the Crown. The first six letters were reprinted in the form of a pamphlet: of the others, the reader will find an abstract in the Appendix, marked C.

These petitions, and complaints, occasioned great debates in Parliament. A little time after the session closed, which was in the early part of July, Mr. O'Beirne wrote a very spirited account of the proceedings of that session, which was entitled "A Short History of the last Session

“ of Parliament, with Remarks.” A short extract from the second page will shew the reader the stile and scope of it. “ That all the calamities entailed upon this country, owe their origin and progress to the corruption of Parliament, is a fact that will hardly be controverted. Without that blind and implicit obedience, which the majority of the House of Commons have indiscriminately payed to every administration, under every shifting of Government, through every change and fluctuation of contradictory measures for so many years past, the nation could never have fallen a sacrifice, as it has done, to the ignorance, incapacity and folly, of the most profligate set of men that ever entailed ruin on the nation they governed. As the corruption of Parliament, therefore, has been the source of our calamities, the redress of them can only be expected from its restoration to freedom and independency.”

The unfortunate riots, which happened in London, at the beginning of June 1780,
drew

drew forth Mr. O'Beirne's pen. He wrote a pamphlet, on the subject of these disturbances, which was much admired. It was entitled "Considerations on the late Disturbances, by a Consistent Whig." It was generally attributed to Mr. Burke, but it was a mistaken opinion; though it must be confessed that Mr. O'Beirne's style and argument are very much in Mr. Burke's manner.

His last publication was on the subject of the trials of Admiral Keppel, and Sir Hugh Palliser; and is esteemed by all naval people to be a very masterly performance. It is in behalf of Admiral Keppel; and is entitled "Considerations on the Principles of Naval Discipline, and Naval Courts-Martial; in which the Doctrines laid down in the House of Commons upon those Subjects are examined, and the Conduct of the Courts-Martial on Admiral Keppel and Sir Hugh Palliser are compared."

Upon the appointment of the Duke of Portland to the post of First Lord of the Treasury in 1783, his Grace made Mr.

O'Beirne his private secretary. But the Ministry being again changed at the end of that year, he retired to France, and resided at Aubigny, the Duke of Richmond's estate. When the troubles broke out in France, he returned to England; And when Earl Fitzwilliam was appointed Lord Lieutenant of Ireland, which was in the month of December, 1794, Mr. O'Beirne was appointed his Lordship's secretary. During the noble Lord's residence in Dublin, the bishopric of Ossory became vacant by the death of Dr. Beresford; upon which Mr. O'Beirne was immediately promoted to that see.

CHAPTER XI.

*SECRET AND TRUE HISTORY OF THE
IRISH OCTENNIAL BILL.*

Irish Electors instruct their Representatives to bring in a Septennial Bill. Extraordinary Preamble to it, with a View to defeat it. Sent to England. Delayed. Remarks. Altered. Returned to Ireland. People of Dublin assemble in immense Numbers, and compel their Representatives to pass the Bill. Further Remarks. Management of the Parliament of Ireland, and of the last Parliament of Scotland. Anecdote of Lord William Gordon.

BEFORE the year 1768, when this bill passed, the Parliament of Ireland was only determined by the King's life; but now (according to this law) the Parliament of that kingdom is to be chosen once in eight years. A short history of this extraordinary event cannot be undeserving the reader's attention.

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No blame attaches to the Lord Lieutenant in this affair; but a great deal of something worse attaches to the *secret cabinet* at St. James's, whose design was to have defeated the measure, and to have transferred the odium of that defeat upon those, who, for other purposes, they had encouraged to demand it.

In the month of August, 1767, Lord Townshend was appointed Lord Lieutenant of Ireland. During the preceding year, a considerable majority of the electors of Ireland instructed their representatives on the subject, or, as they termed it, on the necessity of bringing in, and passing, a bill, to limit the duration of Parliament to *seven* years; in like manner, as the Parliament of Great Britain is limited; and so warm and so numerous were the electors, particularly all the lower class, in support of this measure, that there was scarcely a town or county throughout the kingdom which did not instruct and insist upon their representatives voting for such bill; and the electors
of

of some places carried their enthusiasm so far, as to compel their Members to make oath they would vote for it. Accordingly, when the Irish Parliament met in the month of November, 1767, the heads of a bill for limiting the duration of Parliaments to *seven* years were brought into the House of Commons, and immediately passed. But, agreeable to the mode of enacting laws at that time in Ireland, these heads of the bill were transmitted to England, for the approbation of the King and Council, that being the next stage of progress. And here it must be observed, that the reason of the Commons passing the bill, was not the positive commands of their Constituents, but the sanguine hopes which the Irish Patriots themselves entertained, that it would, without a doubt, be rejected in England. And therefore, in order to make this wished-for rejection as certain as possible, the preamble of the bill stated, that, "*Whereas it is the undoubted right of the people of Ireland to a more frequent choice of their representatives, &c.*" Thus they

changed the request of a *boon* into a demand of a *right*; which was certainly neither a respectful nor a proper mode of soliciting the resignation of a power that had been held and exercised by the Crown during a long period of years; for it implied, that the *right* had been *withheld* from the subject all that time.

In this state, and in the confident hope that the bill would be rejected in England, it passed the House of Commons in Ireland, and was sent to the British Ministry. Although the Ministry were apprized of the bill, they did not expect it would have appeared in so exceptionable a form. The bills which accompanied it, they returned; but this bill they detained for subsequent consideration. Thus this circumstance became one of those political manœuvres which are often known to occupy the whole attention of a cabinet, while the dearest interests of the nation are totally neglected. But whether, in this instance, it is doing justice to the penetration of the British Cabinet,

to say that they immediately discovered the *finesse* of the Irish Patriots; or whether their hesitation arose from their apprehensions of the turbulent spirit which appeared among the people of Ireland upon this subject, perhaps is not easily ascertained. They hesitated two months. The British Ministry knew that the Irish Patriots were not *sincere* in their wishes for the bill; and, that a number of fortuitous causes had brought it forward sooner than was at first intended; but it was obvious, from the words of the preamble, that it was designed to throw the odium of rejecting it upon the British Cabinet. The whole time of delay was, no doubt, employed in forming a manœuvre to retort upon the enemy. By the advice of some friends they obtained relief. Probably it was that of the Lord Lieutenant, whose assistance they implored, but had not deserved; for scarcely any Lord Lieutenant was treated worse. He was appointed by the influence of one party, and received his instructions during the influence of another. The British Cabinet
at

at this time consisting of nothing but faction, intrigue, and hypocrisy. He was often times left to be his own Palinurus, in his passage between Scylla and Charibdis. After many consultations, the British Cabinet resolved, not to reject the bill totally, but to adopt a middle course; and to offer to the patriots a similar insult to that they had received; this was, to *alter* a bill materially; for it was usually considered at that time in Ireland, that the Council in England ought not to *alter* their bills, but to reject them, upon the same principle, that the Lords in England are not permitted to alter a money-bill, but may reject it.

During the whole time that the bill was under the consideration of the Ministry, the anxious representatives, and the anxious people of Ireland, were under the greatest apprehensions; the latter praying incessantly for the return of the bill; and the former ardently wishing, but not daring to avow their wishes, that it might continue for ever under consideration.

At length, in the month of January,
1778,

1778, the bill arrived in Dublin; but such *essential alterations* were made in it, as clearly shewed, that the British Ministers had not only discovered the design that had been formed to make them reject the bill, but had resolved to throw the imputation of its rejection upon those who were the original authors and promoters of it. The British Ministry were now as confident, as the Irish patriots had been, that the bill would be rejected. They made no doubt of the high spirited patriots throwing it out with indignation.

The principal alterations were these:—the term *seven* years, was changed into *eight* years. The preamble was struck out entirely. And instead of permitting the present Parliament to continue seven years longer, as was intended by the bill, it was inserted in the bill, that the Parliament should be dissolved at the end of the present session.

These alterations were, in the judgment of the British Cabinet, sufficient to secure
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the total rejection of the bill by the Irish House of Commons. But it happened otherwise. The people put an end to the manœuvres of both parties. As soon as it was known in Dublin that the bill was returned, and the people were informed, that they were to have a frequent choice of representatives, and a new election at the end of the present session, they assembled in considerable bodies, in different parts of that metropolis ; and having strong suspicions that *all* their own representatives were not friendly to the bill, and that under *colour* of the alterations they would throw it out ; a kind of resolve entered spontaneously, individually, and without any previous consultation, into every man's mind,—to assume, what they conceived to be, their *original* and inherent right. No system, or plan, was formed by them. Only one opinion prevailed instantly amongst them ; and that was, that the bill *must* and *shall* be passed into a law. For this purpose, on the day appointed for taking the bill into consideration in Parliament, the people assembled in astonishing great numbers in several
parts

parts of the city; College-green was crowded; the Parliament House was surrounded; and all the avenues of it were filled: such a general rising in Dublin had not happened in the memory of the oldest person then living. Upwards of twenty thousand were reckoned to be assembled at the Parliament House. Through these immense multitudes the Members were obliged to pass. Each Member was distinctly seized upon, and compelled to promise, and many to swear, that they would vote for passing the bill. Those who *secretly* did not approve of the bill, seeing the frowning and terrific aspect of the public spirit, which themselves had contributed to raise, and not chusing to risk their lives and properties upon a question of rejection, immediately thought it most prudent to affect to despise the affront offered to them, by the alterations; and assumed a chearful disposition to pass the bill. The bill was passed unanimously; and the House of Commons concluded this "eventful history," with an address of thanks for their own dissolution.

A few

A few remarks may not be improper :—

Neither the British nor Irish parties seem to have had a correct comprehension of the natural consequences of this bill. All their consultations seem to have been confined to the contrivance of stratagems for the moment ; instead of looking forward to the great circumstances which the bill dictated. The patrons of boroughs, instead of selling their seats in Parliament, and the electors, instead of selling their votes, *only* upon the death of a King, or the death of a Member, were both, by this bill, at liberty to make a new bargain and sale, every *eight* years. So that the powers of interest and corruption were not weakened, but strengthened by this law ; were not limited, but extended by it.—And after what we have seen of the *management* of the Parliament of Ireland, no man will deny, that the Parliament of that kingdom has not been as successfully conducted as any other Parliament has been.—Even Lord Fitzwilliam admits the fact, in his first letter to Lord Carlisle, written in the year 1795, upon the subject of his intended

ended emancipation of the Irish Catholics. He says, the Catholics being resolved to bring forward the subject, had put their petition into the hands of his friend Mr. Grattan; "I therefore desired Mr. Grattan to take possession of the business, *that I might be sure of myself having controul over the management of the bill.*" But Mr. Fox is more open and explicit upon this subject, in his speech in the British House of Commons, upon the state of Ireland, on the 23d of March, 1797. "The advantages which the form of a free constitution seemed to promise to Ireland, have been counteracted by the influence of the Executive Government, and of the British Cabinet. It would be fortunate if this were merely the language of discontent; it would be fortunate if this were an opinion not supported by that unequivocal confirmation it has derived from the measures of Government; it would be fortunate if the system which has been uniformly acted upon, did not give to the complaint so much countenance and validity. Without going into particular details,

“ details, it is impossible not to mention a
 “ few of the most striking events which
 “ establish its truth. At the time of the
 “ unfortunate event of his Majesty's indis-
 “ position, (1788) the Legislature of Ire-
 “ land took a very decided part; the Par-
 “ liament of Ireland did censure the Lord
 “ Lieutenant for the conduct he had pur-
 “ sued, and expressed a decided opinion on
 “ the state of public affairs at that period.
 “ Immediately after this, and during the
 “ Administration of the same Lord Lieu-
 “ tenant, a great accession of *influence* was
 “ gained by the Crown, and the Parlia-
 “ ment was prevailed upon to unsay all
 “ they had said, and to retract every opi-
 “ nion they had given. It is even matter
 “ of notoriety, that a regular system was
 “ then devised for enslaving Ireland. A
 “ person of high consideration was known
 “ to say, that five hundred thousand
 “ pounds had been expended to quell an
 “ opposition in Ireland, and that as much
 “ more must be expended *to bring the*
 “ *Legislature* of that country to a proper
 “ temper. This *systematic plan* of corrup-
 “ tion

' tion upon principle, was followed up by
 ' a suitable system of measures. It was
 ' asserted, and offered to be proved in the
 ' Irish Parliament, by men of the first cha-
 ' racter and the highest talents, and when
 ' I mention the name of Mr. Grattan, I
 ' need add nothing more, that it had been
 ' the *system* of Government, by the sale of
 ' peerages, to raise a purse *to purchase the*
 ' *representation*, or rather the misrepresenta-
 ' tion of the people of Ireland. The charge
 ' was brought by men of as great abilities,
 ' of as unimpeached honour, of as high
 ' public character and private virtue, as
 ' ever appeared either in that country or
 ' in this. It was offered to be proved, that
 ' an equality, or even a majority of the
 ' House of Commons, *were creatures of the*
 ' *Crown*. Another proof of this *substantial*
 ' *dependence* upon the Executive Govern-
 ' ment, was evinced in the manner in
 ' which the demands of the Catholics had
 ' at different times been treated.—Their
 ' first petition merely prayed for a remedy
 ' to some of the most oppressive grievances
 ' under which they laboured, and in the
 VOL. I. I " humblest

“ humblest stile solicited indulgence and
 “ concession. An immense majority of the
 “ House of Commons were not content with
 “ refusing the desire of the petition, but
 “ they resolved to fix upon it a mark of
 “ particular insult, by voting its rejection.
 “ In this haughty and insulting vote, *every*
 “ *Member under the influence of Government*
 “ concurred. The very next session, how-
 “ ever, when the war was begun, and when
 “ a more conciliatory conduct was deemed
 “ prudent, a petition, comprehending claims
 “ much more extensive, obtained a recep-
 “ tion very different from their former
 “ modest pretensions. The *Crown recom-*
 “ *mended the claim*, and the *same* Ministers
 “ who had caused it to be *indignantly re-*
 “ *jected*, now *carried* the vote by which
 “ pretensions far more important were sanc-
 “ tioned. How can such contrariety of con-
 “ duct be accounted for, but upon the
 “ conclusion, that the *influence of the Exe-*
 “ *cutive Government* is the cause from which
 “ it proceeds? when Earl Fitzwilliam went
 “ to Ireland in the capacity of Lord Lieu-
 “ tenant, it was understood that he left
 “ London with the approbation of Ministers,
 “ in

“ in favour of the complete emancipation
 “ of the Catholics ; but after the hopes
 “ which had been raised, after the known
 “ *preparation* of Parliament to vote complete
 “ emancipation to the Catholics, he is sud-
 “ denly dismissed, the whole system is re-
 “ versed, and the question which a few
 “ weeks before would have been carried
 “ with unanimity, is rejected by a vast ma-
 “ jority. What was this but the most in-
 “ sulting display of the *dependance* of the
 “ Irish Legislature ? was it not a proof
 “ beyond a thousand demonstrations, that
 “ Ireland had gained nothing, that she was
 “ placed in a state of degradation beyond
 “ any former period ?”

This state-secret of *managing* a Parli-
 ament, is in no instance more palpable
 than in that of Scotland, at the time
 of the Union. The Earl of Glasgow was
 appointed *manager* upon that occasion ;
 he was Treasurer-depute of Scotland.
 The Earl of Godolphin, who was Lord
 Treasurer of England, sent, in the year 1705,
 upwards of twenty thousand pounds to Scot-
 land, to be distributed to the *best advantage*

by the Earl of Glasgow. Five years afterwards, upon the great change of the Ministry, a committee of the House of Commons being appointed to enquire into the expenditure of the public money, the Earl of Glasgow was examined *upon oath* before this committee. In this examination he stated, that he had distributed the money, sent by the Earl of Godolphin, in the following manner :

	£.	s.	d.
To the Duke of Queensberry, and as Lord Commissioner for Equipage and daily Allowance - - -	12,325	0	0
To the Duke of Athol -	1000	0	0
Marquis of Tweeddale	1000	0	0
Earl of Marchmont	1,104	15	7
Lord Cefnock, afterwards Polwarth -	500	0	0
Earl of Belcarris -	500	0	0
Earl of Roxburgh -	500	0	0
Earl of Scafield -	490	0	0
Earl of Cromarty -	300	0	0
Lord Anstruther -	300	0	0
Mr. Stuart, of Castle-stuart	300	0	0
Sir William Sharp -	300	0	0
Duke			

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	£.	s.	d.
to the Duke of Montrose -	200	0	0
Earl of Dunmore -	200	0	0
Earl of Kintore - -	200	0	0
Lord Ormiston (Lord			
Justice Clerk) -	200	0	0
Lord Elphinston - -	200	0	0
Mr. John Campbell -	200	0	0
Earl of Glencairne -	100	0	0
Earl of Forfar - -	100	0	0
Lord Frazer - - -	100	0	0
Sir Kenneth Mackenzie	100	0	0
John Muir (Provost of			
Aire) - - - -	100	0	0
Major Cunningham, of			
Eckatt - - - -	100	0	0
Lord Forbes - - -	50	0	0
Lord Elibank - -	50	0	0
Patrick Coultrain (Pro-			
vost of Wigtoun) -	25	0	0
Mr. Alexander Wedder-			
burn - - - - -	75	0	0

[The House of Commons ordered the report of the committee to be printed, but it never was printed.]

It is necessary to observe, that there were three parties in the Scottish Parliament at this time. The Whigs, who were for the Union. The Cavaliers, or Jacobites, who were against it. And a neutral party, who were called *the Squadrone*; from which has probably been derived the modern appellation of *Flying Squadron*: at the head of this party were the Marquis of Tweeddale, the Earls of Marchmont, Roxburgh, &c. Bishop Burnet says, in book seven of the History of his own Times, "That they kept themselves very close and united: When they were spoke to by the Ministry, they answered coldly, they were between twenty and thirty in number. If they had set themselves against the Union, the design must have miscarried." How they were *managed*, the Earl of Glasgow fully explains.

In later times another kind of influence has been introduced. We have one authentic instance of it. Upon the death of Lord Cathcart, in the year 1776, his office of First Lord of Police was given to Lord
March,

March, now Duke of Queensberry ; who resigned his place of Vice-Admiral of Scotland ; the Duke of Gordon applied for the latter place for his brother, Lord William Gordon, who was not in Parliament. Lord North, who was at that time Minister, answered, that he had no objection, provided Lord William could obtain a seat in Parliament. An opportunity of that kind did not then occur ; upon which Lord North suggested, that Lord George Gordon might vacate for his brother. This Lord George refused to do ; and mentioned the fact in the House of Commons, on the 13th of April, 1778. The place was given to Lord Breadalbane. Lord North vindicated himself by, saying (not in Parliament) “ That he had a right to expect, that an “ office worth a thousand pounds per annum “ should *beget* a vote in Parliament.”

CHAPTER XII.

SIR JAMES CALDWELL, BART.

AFFAIRS OF IRELAND.

The first Writer of Modern Debates from Memory and a real Attendance. His Manner of doing it. Motives for publishing the Debates. Discovery of Count Viri's Pension. Title of his Tract on the Trade of Ireland. Lord Camden's Letter to him. Second Letter from Lord Camden. Lord Townshend's Letter to him. Second Letter from Lord Townshend. Extract from his Tract concerning the Trade of Ireland.

THIS Gentleman has the honour to stand foremost in the modern history of Parliamentary Literature. He was the first person who wrote a regular series of Parliamentary Debates, from memory and a real attendance. These debates are of the House of Commons of Ireland, in the first session after the treaty of peace in 1763. These

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debates

debates are not only written in excellent language, but are allowed to be very correct. His manner of taking them will be best stated in his own words.

“ By these debates, carried on with the deepest penetration, the most extensive knowledge, and the most forcible eloquence, I was so impressed, that, after I had left the House, the voice of the speaker was still in my ears, and the sentiments I had heard excluded all others from my mind. I was impelled, as it were, by an irresistible impulse, to commit to paper what was thus forcibly retained by my memory, before it should be mixed with other ideas, or in any degree obliterated by them; when I made the attempt, I found the task still easier than I had imagined, my attention was more fixed, and the deliberate recollection which writing made necessary, brought back the ideas in a slow but regular succession, and generally in the very words which had been used to express them. When I had succeeded in recording these speeches, so much to my own satisfaction,
I could

I could not help wishing to communicate the pleasure I had received. I considered; that nothing could be a more interesting object of curiosity, than the sentiments of those who have been selected by the suffrages of their country to compose the supreme council of the nation, with respect to the laws which are there formed for its government; and that it must afford the highest satisfaction to every individual to see the reason and foundation of those acts on which property, liberty, and life depend. I considered also, that, except some faint and imperfect attempts in England, this service had never yet been rendered to the public; a desire therefore of obtaining honour to myself, concurring with that of benefiting others, determined me to make them public. I flatter myself that these debates will discover abilities in the speakers that would do honour to any age, and to any nation; and that their speeches will not suffer by a comparison even with those of the Senate of Great Britain."

What Sir James says of the publication
of

of the debates in Great Britain is certainly true. They were very imperfectly printed, until about the eve of the American war. About that time, the public began to conceive, that they had a right to some information of the proceedings of Parliament; and both Houses have connived at the publication of their debates, which have been given in the daily prints with very tolerable accuracy.

From these debates, by Sir James Caldwell, the public were first informed of the pension given to the Minister of the King of Sardinia for negotiating the peace of 1763, between England and France. The discovery was made by Edmund Sexton Pery, Esq; now Lord Pery, who informed the House of Commons of the fact, on the 24th of November, 1763, in these words, " I think one of the greatest disadvantages arising from the grant of pensions, is the enriching aliens with the treasure of our country. I shall communicate a fact to this House, from which it will appear, that the grant of pensions to aliens is supposed to

to be contrary to the sense of the nation, even by the advisers of such grant, and therefore not avowed, though made. There is a pension granted nominally to one George Charles, but really to Monsieur de Verois, the Sardinian Minister, for negotiating the peace that has been concluded with the Minister of France. I must confess, that in my opinion, this service deserved no such recompence, at least on our part; so that, in this case, our money is not only granted to an alien, but to an alien who has no merit to plead. If it is thought a defensible measure, I should be glad to know why it was not avowed; and why, if it is proper we should pay a thousand pounds a year to Monsieur Verois, we should be made to believe that we pay it to George Charles? In short, as pensions are indiscriminately given for all purposes, upon all occasions, and to all persons, both for lives and for years, I think it is a duty incumbent upon this House, to address his Majesty on the occasion." [He moved an address, but it was negatived.]

In

In the year 1779, Sir James had an idea of republishing a tract concerning Ireland, which he had published in the year 1763, entitled, “ An *Enquiry* how far the *Restrictions* laid upon the Trade of Ireland, by British Acts of Parliament, are a Benefit or Disadvantage to the British Dominions in general, and to England in particular, for whose separate Advantage they were intended.” And he communicated his design to some very respectable persons who approved of it. Lord Camden and Lord Townshend honoured his communication with the following letters.

Lord Camden says, “ I think myself very much obliged to you for putting into my hands that tract that relates to the *restrictions* laid by England upon the Irish trade. The subject is treated with so much knowledge and good sense, that no disinterested person can read it without immediate conviction ; and I am very happy to find my own sentiments so perfectly concur with yours. Our Parliament are very busy at present in reviewing their trade-acts that respect Ireland, and propose to grant some indul-

indulgences to your country. How far they will go I cannot tell, but I am sure they will not go far enough ; for the false opinion of self-interest is so prevalent in the minds of our country gentlemen, that I despair of their ever giving up the monopoly of the cloth manufacture ; so that Ireland will still remain a poor country. And yet even this relaxation which they propose, will be worth acceptance ; and will be so far useful, as it will, in some sort, open and enlarge the minds of our narrow politicians, and teach them, from what has happened in America, that their own welfare is more united with the propriety of their foreign dominions, than they used to imagine. I am a friend to Ireland, for the sake of England ; upon which principle, she may depend upon my poor endeavours to release her from all injudicious restrictions, and to unfetter all her ports. But, alas ! I am but one insignificant individual.

“ I have the honour to be,

“ With the greatest respect,

“ Your most obedient faithful servant,

“ *April 13, 1778,*

“ CAMDEN.”

New Burlington-street.

SECOND

SECOND LETTER FROM LORD CAMDEN.

“ SIR,

“ I am indebted to your obliging correspondence for many letters, and a great deal of interesting intelligence, during the alarming period when the nation was astonished at the appearance of the combined fleet off Plymouth. But I doubt whether I shall easily obtain your pardon for having waited so long before I acknowledged your several favours. It was some time before I knew how to direct to you, for Sidmouth was no market-town; and till I received your last letter, I did not know it was near Honiton. Besides, as your letters contained only intelligence, I wished for an opportunity of paying you in kind, by some information from this side of the country, if I could have obtained it; but now, since the fleets have disappeared, and the common opinion is, that we shall hear no more of them this year, I shall wait no longer, but return my best thanks for your communication, and beg you will excuse my tardiness, and impute it to any other cause, than neglect or indifference. I wish your
busi-

business, or the health of your family, or any other cause, had called you near London, to have given me an opportunity of a personal acquaintance, instead of this distant conversation, by means of an imperfect correspondence; and to have known more fully your sentiments upon the political state of Ireland, which I presume will make an important part of our business next session. Do you intend to publish that tract upon the *commerce* of that country, that you favoured me with the sight of? I think it would be seasonable and useful. I am happy to concur with all your ideas upon that subject; and that makes me very desirous of further instruction; for he who has for so many years applied his thoughts to one great object, must be the best judge of what measures are the likeliest to attain it. If I have the happiness to hear from you, I promise to thank you for the favour, by a speedy answer; and in the mean time beg leave to assure you that I am, with the greatest respect,

“ Your most obedient faithful servant,

“ Sept. 19, 1779,

“ CAMDEN.”

Camden-place.

EXTRACT

SIR JAMES CALDWELL, BART. 129

EXTRACT FROM LORD TOWNSHEND'S
LETTER.

“ Portman-square, 1st July, 1779.

“ SIR,

“ The critical situation of Ireland, at this period, seems to require the exertion of every friend to both countries; be it to act, to write, and in short, to animate the minds of men to the same salutary purpose, which may save, perhaps recover, the British empire. I am sorry to say, how few I find impressed with a due sense of the present dangers.”

EXTRACT FROM ANOTHER LETTER FROM
LORD TOWNSHEND.

“ Portman-square, Dec. 1779.

“ SIR,

“ I am happy to hear, that your *Enquiry* is soon to appear; and that the interesting lights it will convey to the public, have been applied so opportunely.”

From the reader's perusal of these letters, it is perfectly natural to suppose, that he

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will have a desire to see the tract so frequently mentioned in them; or at least such extracts from it, as shall contain the most essential parts of it. After such testimonies, it may be presumed that no apology is necessary for subjoining such extracts in this place.

“ Trade naturally results from the establishment of civil society, and the gradual discovery of arts; and is absolutely necessary to the subsistence, prosperity, and defence of such society, as will appear from the following propositions.

“ It is essentially necessary to the well-being of every nation, formed of civil society, that there should be a supply of the necessaries of life, with plenty and conveniency, and an ability to defend these advantages from being seized by others.

“ The mere necessaries of life depend on the cultivation of land, and the breeding of cattle, and may therefore be supplied to many by the labour of a few.

“ As

SIR JAMES CALDWELL, BART. 131

“ As wherever there is property, it must of necessity be unequally divided, at least after a very short time, the poor will furnish necessaries to the rich, and the rich will subsist them for their labour.

“ But as the rich will always be the few, and as the furnishing them with the necessaries of life will by no means employ the many, a great proportion of the poor must be without employment; and, consequently, without subsistence, if their labour can be applied to no other purposes.

“ Those, therefore, whose labour furnishes the necessaries of life, and those who share them without labour, are all that can subsist in any society where artificial wants are not introduced; for how should those who have not property, and who are not employed for the accommodation of others that have property, procure subsistence?

“ A community from which these use-

less hands should be ejected, might, perhaps, be as happy, possibly happier than a community in which artificial wants should be introduced; but it must necessarily be small, and, consequently, weak. Its happiness, therefore, cannot be permanent, as it will be liable to be subdued and enslaved at the caprice of any stronger power by which it can be invaded.

“ As it is therefore necessary for national defence, that the nation should consist of more than those whose labour supplies the mere necessaries of life, and those who share them without labour: it follows, that more must be employed, for without employment they cannot subsist.

“ Thus it becomes necessary to introduce artificial wants, the supplying which will procure necessaries and conveniences to the multitudes whom the supply of mere natural wants would leave unemployed, and whom a society in which natural wants only are supplied, must necessarily exclude.

“ Luxuries,

“ Luxuries, therefore, are necessary, not for the sake of the pleasure which they bring to those for whom they are furnished, but for the sake of subsisting those who furnish them, in order to secure the peaceable possession of necessities, with plenty and conveniency to the community.

“ But populousness alone is not always sufficient for national defence; a considerable number of the people must be so employed as to be peculiarly fitted for military operations.

“ A maritime nation, and in particular an island, must be defended principally by a marine; it is therefore necessary that the trade of such a nation, or the intercourse by which artificial wants are mutually supplied, should be extended to foreign countries, that it may employ much shipping.

“ When such a trade is established in any country, as will fully employ all its

inhabitants, and would furnish employment to still more, the number will naturally increase.

“ When the trade of any country will not employ all its inhabitants, the number will naturally and necessarily decrease.

“ When the trade of any nation is such as to render it populous, by finding employment for as many inhabitants as it has, and as many more as it can produce; and, if a maritime nation, with a sufficient number employed in shipping; such a nation, with respect to trade, is in the most prosperous state, and derives all the advantage from trade that trade can produce.

“ The acquisition of wealth by such trade, the great end to which it has been generally directed, and the great advantage supposed to have been derived from it, is so far from being a benefit, that it is an evil, and is so far from supporting trade, that it subverts it.

“ If

“ If any nation by trade acquires more money, whether nominal or real, than other nations, labour will be proportionably dearer than in other nations; and, therefore, the trade of that nation, with respect to such manufactures as other nations can carry to the same market, will be *felo de se*; it will be destroyed by itself; or, which is the same thing, by the wealth that it has produced.

“ It seems, therefore, to be a fundamental, though an universal error, that with respect to Great Britain, trade is only advantageous in proportion as the balance is in her favour; that is, in proportion as she procures her imports immediately by labour, and sells her exports for money. For if this should be universally the case, Great Britain would be undone by the very thing that is supposed to constitute her prosperity and power, the perpetual accumulation of money. It is our interest, say writers on trade, to pay for our exports rather with labour than money, because money employs no hands. This,

however, is a mistake; for Great Britain having no mines of gold and silver, can have no money but what she procures by labour. All, therefore, that she purchases, is ultimately purchased by labour; and if her labour is first changed into money with one country, and in this form changed into commodities with another, it is labour still; and industry will be equally busied to procure more money at one market to carry to another, as to send away product or manufacture in kind, to the very market to which they are now sent converted into money, with this advantage, that the money which a balance of trade with one nation brings home, not being retained among us, the value of labour will not rise so as gradually to subvert our manufactures, consequently our trade, by enabling our neighbours to undersell us at the foreign markets.

“ The value of money is wholly relative to those things which it is to purchase, and when money, by great plenty, becomes cheap, other things will necessarily

ily become dear in the same proportion. When one hundred pound is equivalent to six pounds a year for ever, it will go just as far as two hundred pounds, when one hundred pounds is equivalent only to three pounds a year for ever: and he that possesses one hundred pounds when it is equivalent to six pounds a year for ever, is just as rich as he that possesses two hundred pounds when money has lost half its value by the very same cause which doubled his property.

“ With respect to trade, Ireland and England seem to suffer similar evils from opposite causes. Ireland suffers by restrictions and prohibitions which deprive its inhabitants of employment, and consequently lessen their numbers, both by preventing propagation, and driving many out of the kingdom who cannot procure subsistence in it. And England suffers by an excessive accumulation of money, whether nominal or real; in consequence of which, its value being less, more is necessary to balance any given quantity of necessaries, and

and the price of labour is proportionably increased, so that the manufacturer is unemployed, because the foreign market is supplied by those who can work cheaper.

“ Times of particular scarcity and plenty there will be in every country ; but this is wholly independant of the relation between the price of provisions and labour, and the value of money. The value of money will be proportioned to its scarcity or plenty, and the price of provisions and labour will always be in proportion to the value of money ; yet it does not follow, that the inhabitants of any country will, with respect to each other, be richer when money is plenty, or poorer when money is scarce ; nor that when the plenty of money has advanced the price of provisions and labour, they will be procured with more difficulty, than when the scarcity of money rendered the price low ; for the very cause that makes provisions and labour come for a little money is, there being but little money to procure them, and *vice versa*. Plenty and scarcity, with respect

pect to the necessaries of life, or their dearness or cheapness to the inhabitants of any particular country, does not depend upon their value in proportion to the value of money, upon their selling for much or for little, in consequence of money's being either plenty or scarce; but upon the proportion between the worth of labour or art, in any country, and the worth or price of necessaries. In a country where the labour of an artificer is worth two shillings a day, and meat is four pence a pound, meat may be said to be as cheap, as in a country where the labour of an artificer is worth but one shilling a day, and meat is two pence a pound; but if in one of these countries, meat by an accidental scarcity, rises to five pence a pound, and in the other to three pence, while the price of work or labour continues the same, meat may then justly be said to be dear. Thus provisions are dear and cheap, not in proportion to the sum they cost, but in proportion as they balance the worth of labour; when they less than balance it, they

they are cheap, when they more than balance it, they are dear.

“ I shall now endeavour to shew, that England and Ireland being one aggregate, what distresses Ireland, must, in the proportion that Ireland bears to England, distress the whole; because England, considered as an individual distinct from Ireland, does not derive the benefit she proposed from those restrictions which distress her sister-country; and I shall endeavour to shew farther, that his Majesty's dominions, including both England and Ireland, suffer by the distresses of Ireland, in consequence of the restrictions upon her trade, more than in the proportion which Ireland, as a part, bears to the whole; and that the disadvantages of Ireland in this respect are eventually disadvantages to England, in the same, if not in a greater degree.

“ The principal articles in which the trade of Ireland is restrained, with a view to the particular advantage of England, are

are provisions of various kinds, manufactured wool, sugar, and molasses.

“ By a statute passed in the eighteenth year of Charles the Second, the exportation of cattle, butter, and other necessaries from Ireland to England was prohibited, with a view to keep up the value of English land, by encouraging home consumption. The fatal effects of this prohibition to Ireland are manifest; and it has produced effects little less fatal to England, instead of the advantage she proposed.

“ First, It has concurred with the cause already assigned to increase the price of provisions in England, by giving a monopoly to a few breeding counties to exact a price for cattle still higher than in proportion to the value of money and the expence of breeding; in consequence of which, it has raised the price of labour, and increased the expence of freight; in both which particulars it has injured our trade; for when the manufacturer is paid

paid a high price for his labour, and the ship that should carry the commodity he makes to a foreign market is victualled at an increased expence, we cannot sell our commodities so cheap as our rivals, and consequently must at length be supplanted by them. As this monopoly, with respect to the people, is unjust, and with respect to the trader destructive, so the advantage to the landholder is only imaginary.

“ In consequence of the statute against importing provisions from Ireland, the English grazier sells English cattle at a higher price, and pays his landlord an advanced rent; but what then? Both the grazier and the landlord lose more than they gain. As provisions are thus made dearer to the manufacturer, the manufacturer will in his turn make labour dearer, and dear labour will make dear goods of every kind. Even unmanufactured commodities will always be sold dear in the same proportion as provisions are dearly bought, as has been proved, to a demonstration,
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by the great Mr. Locke, and in almost every treatise upon taxes that has been written; where every duty has been shewn to fall ultimately on the landholders; upon those who cannot encrease their revenue in proportion as government encreases their expence; which traders of every kind do, by raising the price of the commodities they sell in consequence of a tax, whether they be the very commodities on which the tax is laid or not. So that if the grazier and landlord, after selling cattle at an exorbitant price, and receiving an exorbitant rent; pay proportionably more for every article they consume, the balance must certainly be against them at the year's end.

“ As every prohibition on the trade of Ireland produces a monopoly in England, every such prohibition must of necessity hurt the trade of England; for a monopoly always adds an artificial value to the commodity, and consequently must prevent the exportation of it to foreign parts, whither the same commodity is sent
from

from countries in which it bears only its natural value. How would a Dutchman or a Frenchman laugh, says Decker, to hear the wisdom of our laws extolled for preventing the importation of cattle from Ireland, and corn from any country, except it first bears an immoderate price at home, when he reflects that in his country, the poor, getting provisions from any place where they can be had cheapest, are enabled to work at prices which an Englishman could not live by?

“ The same false policy, however, that first prohibited the exportation of provisions from Ireland to England, continued the prohibition. The people of Ireland therefore, applied themselves to the breeding of sheep, rather than cattle, with a view to raise a growth of wool; nor did they stop here, manufactures were soon established, and their wool was wrought into stuffs of various kinds, which turned to good account,

“ But this was no sooner effected than
England

England took the alarm; she knew that labour was cheaper on the other side of the water, and feared that the Irish would supplant her in foreign markets by selling the same commodities at a lower price; with a view therefore to encourage her own manufactories, and secure them against so dangerous a rival, she, by an Act of the tenth and eleventh of William III. prohibited the exportation of wool from Ireland, after it should be manufactured, except only to England and Wales.

“ But this measure was so far from benefiting England at the expence of Ireland, that, with respect to the trade in question, it has involved both in the same ruin.

“ That it was a fatal stroke to the manufacture of Ireland, in its most essential article, needs no proof; to shew that it was equally fatal to the manufacture of England, in an article that to her also was of the greatest importance, it is necessary to consider the subject in an extensive view.

“ It is of infinite importance to every nation that depends for prosperity and defence upon foreign trade, to have some manufacture or commodity peculiar to itself, such as no other can supply the foreign market with, and, consequently, such as may be sold at the most advantageous price. A nation that has such a commodity, or manufacture, in an article of great and universal consumption, has an advantage superior to every other.

“ Such a national advantage to Great Britain and Ireland is wool.

“ 1st. As manufactured wool is of universal consumption, it employs many hands.

“ 2dly. As it is a principal article of foreign trade, it employs much shipping.

“ 3dly. As we can manufacture our wool without the wool of other countries; and as other countries cannot manufacture their wool, to the same advantage, without ours, wool is a peculiar of these
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kingdoms, which will enable us to command a foreign market, even though labour should be dearer with us than with others.

“ The wool of the southern nations, particularly of Spain, is so tender and fine, that it cannot be woven into strong, thick, close cloth, such as is fit for general use. The wool of the northern countries is so coarse, and harsh, that it cannot be manufactured into cloth sufficiently soft and fine for general consumption : But either, being mixed with our wool, which, like a middle quality, reduces both extremes, may be made into excellent cloth, that will rival our own, and if more cheaply manufactured, supplant it at the foreign market, by selling at a less price.

“ It is therefore of the utmost importance to prevent the exportation of our wool unwrought, or, as the traders and manufacturers call it, *raw*; and many laws were made for that purpose, both in England and Ireland.

“ But it being found, that several statutes made in Ireland for that purpose were become obsolete, the Parliament of England passed an Act, in the twelfth year of Charles the Second, which prohibits Ireland from exporting wool to any country but England and Wales, under the severest penalties.

“ The importance of this Act may be fairly inferred from the Act itself; for it is to be presumed, that absolute necessity only would have induced a British Parliament to break through a rule upon which the liberty of a British subject depends; “ that every country ought to be governed by laws of its own making,” and to violate the constitution by subjecting Ireland to laws made in another kingdom.

“ This law, so long as Ireland was permitted to export her wool manufactured, effectually restrained her from exporting it raw; and though a few obscure persons set themselves to acquire an unlawful gain, by smuggling away raw wool, yet,

being the interest of the majority, indeed of the country in general, to prevent in order to secure the advantage of the trade carried on by the woollen manufacture, they were diligently watched, and seldom escaped detection and punishment: These smugglers were consequently few, and the injury they did to the general trade both of England and Ireland, was proportionably small.

“ But when Ireland was restrained from exporting her woollen manufactures, the exportation of raw wool became the business not of a few, but of many; it was no man's interest, merely as a native of Ireland, to prevent it; it was therefore not only connived at, but encouraged; and those who did not unlawfully export raw wool for a pecuniary advantage to themselves, were well pleased to see it done by others, from a principle of resentment and indignation against those who had subjected them to what they could not but consider as a cruel and oppressive law, which had not only impoverished many

individuals, whose wealth was a common benefit, but cut off bread from the mouths of innumerable industrious poor, and, consequently, produced national impotence and poverty.

“ But the number that derive immediate advantage from this practice is very great: The persons who graze the sheep, and who are called Flock-masters, sell the wool at a greater price than it would fetch if it was not smuggled away, and it passes through several hands, three at least, and sometimes four, before it comes into the possession of those who privately ship it, all of whom have a profit upon the trade.

“ As the wool smuggled away to foreign countries, is taken by them at a very high rate, the price of that commodity is so much increased, that the natives of Ireland can scarce afford to manufacture it, even for home consumption; so that as the act for prohibiting the exportation of manufactured wool from Ireland, put a stop to all the looms that were employed for foreign trade,
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the smuggling of wool raw, which was the consequence of that act, has stopped also, in a very great degree, the exportation to England and Wales.

“ The number of hands that are thus deprived of employment, and, consequently, of mouths that are deprived of bread, is very great ; and I find it recorded, upon good authority, that when the woollen manufactory in Ireland was destroyed, by the prohibition to export the work of the loom, no less than twenty thousand industrious artificers left the kingdom at once.

“ But the evil does not stop even here : The great price obtained for wool clandestinely exported, is an encouragement to all owners and occupiers of land to put their ground under sheep, so that the poor, who, in default of manufactures, would be employed in agriculture, are also cut off from that resource, and the number that cannot subsist in their native country, is thus greatly increased. Nor is this an aggravated representation, exhibited to answer a particular

purpose : The want of employment for the poor of Ireland at home, is so notorious, that it is well known two thirds of the country are uninhabited, while there are no less than fifteen thousand of them incorporated as mercenaries in foreign armies. The number employed abroad in other capacities must be still greater, as this is certainly the least eligible, and is the resource of those only, who can get employment in no other. Numbers are still continuing to go out of the Island at all opportunities, and bread being rendered dear, by the great quantity of land used for the grazing sheep, at the same time that the labour of the peasant is precluded, the wretches that remain have scarcely the appearance of human creatures. In England there is no such thing as poverty, in comparison of what is to be found in every part of Ireland, except the cities and principal towns.

“ Nor do the inhabitants of the cities and principal towns escape the evils produced by the contraband exportation of wool. The returns of this illicit trade are always in goods

Goods smuggled in by the same hands that smuggle the wool out. The vessels concerned in this trade cannot wait for any regular freight, but must take what they can get; yet any thing is better than French currency, for that is worth so much less in Ireland than in France, that it would produce a very considerable loss. The goods then brought in return for our wool, are foreign spirits, and other commodities, upon which the King has a high duty; and these being smuggled on shore, a new train of evils is the consequence; the fair trader is injured; and the revenue falling short, by the non-payment of the duties that should support it, new taxes become necessary, and thus the smuggler's profit comes out of the honest man's pocket, whether he is a trader or not.

“ The smuggling wool, therefore, with respect to Ireland, depopulates and impoverishes the country, at the same time that it increases the taxes, and raises the price of bread. It deprives the poor of employment, discourages industry, promotes
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idleness and debauchery, disposes the common people to insult government, sows the seeds of rebellion, and quenches humanity, by making violence, and, in some cases, murder, necessary to self-defence.

“ Those who imagine that this practice can be prevented by any laws, however severe, or by any diligence in the execution of them, while the temptations to continue it remain, know very little of human nature. The anguish of distress, and the sense of injury on one side to urge, the prospect of relief, and revenge on the other to invite, will furnish motives that no human power can controul. It is as cruel and as vain to expect that the people of Ireland should abstain from smuggling wool, because it is forbidden by those who have already forbidden them to eat, by prohibiting the exportation of it manufactured, as to expect that a man should drown contentedly because he cannot come on shore, without trespassing upon the ground of him that thrust him into the water.

“ Whatever is an injury to Ireland, is cer-

certainly contrary to the general interest of that dominion of which Ireland is a part; and the general disadvantages sustained by the oppression of Ireland is great, in proportion to the advantages that might be derived from that kingdom, if it was in a flourishing state: These advantages are immense, and, consequently, the mere interception of them, exclusive of the positive evils that accrue, is an immense loss and detriment to the British dominions in general, as will appear on the most cursory view of Ireland, with respect to its situation and natural superiority over other countries. That the natives are naturally industrious, appears by the readiness, and even zeal, with which they came into the linen manufactory that has lately been established among them. That, if they could procure subsistence, they would multiply greatly, appears by their fruitfulness, where no impediments restrain it. The country, therefore, would be fully peopled, if proper methods were taken to subsist its inhabitants; or rather, if they were suffered, without molestation, to exert their own efforts
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to subsist themselves: and Ireland, if fully peopled, would be superior in wealth, power, and influence, to any country of the same extent in Europe, for no country has so wholesome a climate, so fine, fertile, and improveable a soil, such general and commodious inland navigation, nor sea-ports and harbours so admirably adapted to a foreign trade.

- " But the prohibition laid upon the exports of Ireland, with respect to the woollen manufactures, and the smuggling raw wool to France from thence, its inevitable consequence, produce the most important mischief to England, independent of the disadvantages which they produce to that kingdom, and of the loss England sustains in consequence of those disadvantages.

- " It cannot be pretended that England encreases her inhabitants in proportion as she depopulates Ireland. If the number of people then is the true strength of a state, the depopulation of Ireland is a neat loss;

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in the most important article, to the British dominions.

“ But England is a loser, even in the very article of trade which Ireland has been thus sacrificed to secure and increase. Every pack of Irish wool will work up at least two packs of French wool, none of which could be wrought up without it, into any stuff that would rival us at market. For every pack, therefore, of wool, wrought into any such stuff, that would have rivalled us in a foreign market from Ireland, if her ports had been opened, there are now three packs so manufactured. The disadvantage, therefore, to England, arising from the sale of one pack of Irish raw wool to France, is greater, as three to one, than the disadvantage which she would have suffered if Ireland had exported the same quantity wrought into cloth ; with this aggravation, that France, our rival and enemy, gains what we lose, instead of Ireland, a sister kingdom, subject to the same Prince, and united by the same interest. Thus do we put a foreign and hostile state into possession
of

of the advantages which we forego, which is just doubling our loss, and their gain. Nor are these evils the creatures of mere speculative deduction and theoretical argument; they are evinced by facts too notorious to be doubted, for England has already lost the woollen trade to the Levant intirely, her trade to other parts is decreasing, and in many places the woollen trade is carried on wholly by other nations, who could have shared a very inconsiderable part of it only, if we had not furnished them with materials.

“ The truth is, that while an exorbitant currency, heavy taxes, and innumerable monopolies, especially that arising from the prohibition of provisions from Ireland and other parts beyond the sea, make labour dearer in England than in Ireland or France, either France or Ireland must have the woollen manufacture. The French have it now, but Ireland might still recover it out of her hands, for even now she transports clandestinely a few camblets to Lisbon, where she undersells the French: and will
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England still continue to compliment the French with a trade that she denies to Ireland?

“ The third article in which the trade of Ireland is restrained for the supposed benefit of England, consists of sugar and molasses. The restraint was once extended to other commodities from the plantations, which were by law forbidden to be carried from thence to Ireland, without being first entered and landed in England. After both England and Ireland had suffered by this restriction more than half a century, it was taken off, except with respect to some commodities that were particularly enumerated in the act of repeal, the principal of which were molasses and sugar. But there is the same reason for taking off the restriction with respect to these articles that there was for taking it off from the others. While the restriction was general, the price of various commodities, particularly pitch and tar, was so raised to the consumers in Ireland, who received them from the Plantations through England, by the delay and expence of this double

double navigation, that the same commodities could be procured cheaper from other countries, and the consequence was, that Ireland paid one hundred thousand pounds a year, one year with another, to foreign nations for commodities which she might have had from our own Colonies, and which, since the prohibition to import these articles without landing them in England has been taken off, she has from our Plantations again.

“ Why then should the restriction be continued upon molasses and sugar? Ireland, to avoid the cost, danger, and delay that necessarily attend the only method in which she can receive these commodities from the British Colonies, procures brandy and sugars from France, for which she pays no less than one hundred and fifty thousand pounds per annum.

“ By the trade with France into which England has driven her sister nation, she has drawn upon herself two very considerable disadvantages; in the first place, she has inter-

intercepted one hundred and fifty thousand pounds a year, which would otherwise have gone to her Colonies, and in the second place, she has encreased the power of France to supplant her trade; for France, in return for brandy and sugar, takes Irish beef, against which England has shut her own ports; this provision being procured at a low price, French freight is made cheap in proportion; thus the French victual their ships upon better terms than England can do from her own coast, and she not only suffers it, but makes it necessary. Without Irish beef, says Decker, the French could not well victual their ships at all, and this supply of Irish beef actually enables the French to undersel England in the sugar trade in Europe.

“ If England would effectually prevent Ireland from interfering with her trade as a rival, she should rather endeavour to enrich than to impoverish her, in consequence of which, the price of labour would rise; at the same time, England, by availing herself

of Irish plenty, might reduce the price of labour at home.

“ If England was to open her ports for Irish provisions, and suffer Ireland to export her manufactures, the price of labour in both countries would be brought nearer to a balance : and Ireland would consequently be less able to supplant England in the foreign market. Besides, if Ireland was allowed to export her wool manufactured, and the smuggling away her raw wool was thus prevented, the whole foreign market would be secured to us, which England must of necessity furnish with two parts in three of the woollen goods sold there, for the following manifest reason. One thousand stone of Irish wool produces three thousand stone of manufacture. If the Irish therefore worked up their wool, they could manufacture but one third of that quantity, but as the demand for cloth abroad would be the same, there must then remain two thirds of the demand unsatisfied ; this demand foreigners cannot supply from the nature of their

their wool, and consequently England must; into whose hands two thirds of the present woollen manufacture of France would therefore necessarily fall; thus not only England in general would be benefited, but even the growers and manufacturers of wool, by a repeal of the very law that has oppressed Ireland with a view to their advantage.

“ But if England could not share this trade with Ireland, it would be her interest to let Ireland enjoy it alone, because she has no alternative but to transfer it to France. If England should be in distress she will find a resource in Ireland for relief. If she should part with a proportion of her strength to Ireland, it will still be exerted in her behalf, for her advantage and defence; but if she parts with it to France, it will be employed against her, to her disadvantage and ruin.

“ As England and Ireland are one dominion, though two kingdoms, it is the greatest absurdity imaginable to suppose, that what injures a part, can benefit the whole; that

a measure which enfeebles, depopulates, and depresses one third, can render the aggregate strong, populous, and flourishing.

“ Public happiness, and public wealth, are terms under which mankind in general seem not to have conceived any definite and distinct idea. Happiness, in a political view, and as far as it can be produced and secured by civil institution, is the enjoyment which arises from the gratification of natural wants, and such wants as universal habit has superinduced, with plenty and conveniency : As the public is nothing more than an aggregate of individuals, public happiness must be in proportion to the number of individuals who possess these advantages, and the degree in which they are possessed. Public wealth is a general ability to procure these advantages ; and trade is the cause and medium of public wealth, (*i. e.*) it is that which produces and circulates it. Public happiness therefore, does not consist in any of the splendid and expensive vanities, which in the nature of things, can be possessed but by a few ; nor is public wealth in proportion

tion to the quantity of money brought into and left in the country from abroad. There may be great national wealth, in this sense, without a general ability to procure the necessaries of life with plenty and convenience; nay, this ability will be less general in proportion as national wealth, in this popular but fallacious sense of the word, becomes greater; poor and rich being relative terms, the poor must always be poor, in the same degree that the rich are rich; but the rich do not gain by wealth in the same proportion as the poor suffer by indigence: He that has been long used to dine upon plate, is no happier than if he dined upon pewter; but he that cannot satisfy hunger, is certainly much less happy than he that has plenty of wholesome food. Neither indeed are those who are comparatively rich gainers by that increase of property which rises from the increase of money brought into the nation and left in it by trade, for the reason that has been assigned already; the same cause that increases their property, proportionably increases their expence. Nothing, for in-

stance, can encrease the value of land, that will not proportionably encrease the price of whatever the rent received for such land can buy. Of this truth the writers upon trade seem sometimes to have had a glimpse, and then to have lost sight of it again; for it is common to find the same advocate for trade, when he is recommending it as a general benefit, make court to the country gentleman by telling him that it will encrease the value of his land; and when any method is proposed to encrease the value of land, which he thinks hurtful to general trade, he is very ready to remind his old friend, that by such encrease he can gain nothing.

“ Trade is the medium of public wealth, in the true sense of the word, only when it produces a general ability to procure such things as are become generally necessary, whether by nature or habit. To do this, the trade of every country must be such as fully to employ all its inhabitants. In a country where all are employed, none can suffer by indigence; where few are employed,

ployed,

ployed, the few are too many; where many are employed, the many are too few..

“ Every measure, therefore, which lessens employment in one part of a kingdom, that those who are employed in another part of it may get more money, is not less absurd than cruel; those who are left idle must starve, those whom a monopoly enables to set a fictitious value upon any manufacture or commodity will get money indeed; but cannot be rich, for every monopoly necessarily encreases the expence of life.

“ It is manifest, therefore, that the laws which leave the inhabitants of Ireland without employment, have an immediate and necessary tendency to diminish the strength, happiness, and prosperity of the whole British dominions, and are hurtful even to England herself.

“ It must be remembered, that as the inhabitants of every country, where all are fully employed, will necessarily increase, the strength of such country must encrease

also : and national strength will not only secure advantages already possessed, but compel others ; as it will render the attempts of an enemy unsuccessful, it will also prevent them ; and thus the same cause that circulates the blessings of peace, will prevent the calamities of war.

“ If power, therefore, is advantageous to a state, so is extent of dominion ; for the same number of people cannot live upon ten acres of ground that can live upon twenty. It must then be admitted, that if the number of acres in England was doubled, and the whole was fully peopled, and the people fully employed, the aggregate of happiness and strength would be great in proportion. Will not Ireland, therefore, secure to us all the advantages arising from increase of territory, if England does not depopulate it, by cutting off employment, and consequently bread, from its inhabitants ? And can England procure any partial benefit by treatment so injurious and cruel, in proportion to the loss of such territory and its advantages ? Though the sea divides

divides England from Ireland, both are subject to the same Sovereign, parts of the same dominion, have the same friends and the same enemies, are connected by a common interest, and produce the same articles of commerce. England, in making laws to make Ireland poor, says Sir Francis Brewster, in his *Essay on Trade and Navigation*, acts just like a man who should set his house on fire that he might burn his neighbour's.

“ Is Ireland a distinct kingdom ? So was Yorkshire in the time of the Heptarchy ? Is Ireland distant from England ? Several counties in England are still more distant from each other, and the communication between them is not so easy, with respect to commerce, as the communication between England and Ireland. Ireland is more advantageously situated for the West-India trade than England. Is that a reason why the West-India trade should be confined to England ? It is the general interest to direct trade where it can be best carried on, and not to make the facility of carrying it

it on at one place, a reason for transferring it to another. Bristol is better situated for the Irish trade than London; should London, therefore, petition that the port of Bristol should be locked up?

“Suppose England itself was divided into two kingdoms, one comprehending all the South, the other all the North side of the Thames, and there were hostile prohibitions against importing certain sorts of goods from London to Southwark, and from Southwark to London, and high duties upon all the rest; would not the community manifestly suffer? and is not the case exactly parallel with respect to the two parts of the British dominions that lie on opposite sides of the Irish Channel.

“Postlethwaite, a sensible writer, justly observes, that every argument which can be formed to prove that any certain branch of trade should be confined to one part of the British dominions, which might be carried on with equal convenience at another, against rival nations, will prove, that such
part

part should itself be divided. If England argues that Ireland should have no trade in manufactured wool, it may be argued against Yorkshire, by the rest of England, that this county should be excluded too; by pursuing this argument, the manufacture may be hunted down into one county, thence into one town, nay even to one house, and in that house to one manufacturer. The general interest will suffer by the exclusion in the same proportion that the part excluded bears to the whole.

“As it is manifest, for the reasons already assigned, that England can secure no advantage to the British dominions in general, nor to herself in particular, by restraining the trade of Ireland, it is natural to enquire whether the advantages which she proposed by this measure can be procured any other way.

“It has been shewn, that the prohibition of Irish cattle was intended to increase the value of English land, and that raising the value of English land is no advantage
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to England in whatever degree it may be effected.

“ It has also been shewn, that the prohibition to export manufactured wool from Ireland, was laid on, that the manufacturers of England might have a monopoly in that article ; that England manufactures less wool since this measure than before ; and that she has given to France all that she has taken from Ireland, instead of securing it to herself.

“ As to molasses and sugar, it has been proved, that instead of procuring any advantage from the first landing such of these commodities in England, as were to be consumed in Ireland, England has sent Ireland from her own plantations to another market.

“ And it is plain that these measures were originally suggested by the great difference between the price of labour and necessaries in Ireland and England ; to bring the price of labour and necessaries nearly to
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an equality in both countries, is, therefore, the only means of procuring the advantages which were intended by restraining the trade of Ireland, and which restraining that trade can never produce.

“ Many methods of doing this have been suggested. Postlethwaite advises the cultivation of more land ; others, the abolition of taxes. A critical examination of this subject cannot be expected here, but it is not altogether foreign to the design of this tract, to shew that one very considerable cause of the dearness of labour, and the necessities of life in England, results from the methods she has taken to procure those very advantages which the high price of labour and necessities preclude, and particularly from the innumerable monopolies which she has established with a view to engross trade, and increase money.

“ In Sir Matthew Decker's Essay on the Causes of the Decline of foreign Trade, he has observed that the Dutch, though more taxed in the necessities of life than any other

other people in the world, beat us out of our trade, by fabricating the same manufactures for less money; and to shew how this happens, he exhibits the following state of the disadvantages of an English woollen manufacturer, in comparison with the woollen manufacturer of Holland.

“ The disadvantages of the English manufacturer, are,

“ 1st. He must buy bread made of English corn, though dearer than foreign. Thus the farmer has a *monopoly* against the manufacturer, and all monopolies enhance the price of goods.

“ 2dly. He has no drawback upon his corn.

“ 3dly. He has no drawback on his malt.

“ 4thly. He has no drawback on his leather.

“ 5thly. He pays a duty on his coals of
10s.

10s. a chaldron in London, and 5s. a chaldron in the out ports.

“ 6thly. He must buy English beef, pork, mutton, lamb, and butter, though he can have IRISH CHEAPER. This gives the grazier a *monopoly* against him to make his meat dear.

“ 7thly. He must buy fish caught by British vessels (except a few ports) though he can have it cheaper from the Dutch and French. This gives the fisherman a *monopoly* against him to make his fish dear.

“ 8thly. He must not buy foreign hats, cloths, stuffs, stockings, or any coarse woollen goods for his own use that are cheaper than English, even though he could sell his own to greater advantage than wearing them himself. These several branches, therefore, have a *monopoly* against him, and the rest of the nation, to make all sorts of cloathing dear.

“ 9thly. He must not buy French linen
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for his own use, however cheap, by which the linen countries have a *monopoly* against him to make his linen dear.

“ 10thly. He must not buy, for his own use, foreign sheermen’s sheers, iron, or tin wares, however cheap, which gives the manufacturers of those wares a *monopoly* against him, to make his utensils of iron and tin dear.

“ 11. He must not procure several sorts of goods, which are imported for his use, at the cheapest market, but only at the usual ports of shipping; thus particular ports have a *monopoly* against him to make these goods dear.

“ 12. He must not have these goods shipped at the cheapest freights, but must ship them on British ships or ships of the country, and at the usual ports, by which these ships have a *monopoly* against him, to make these goods still dearer.

“ 13. He has heavy customs to pay on
the

he oil and soap he uses in manufacturing his goods which contributes to enhance their price.

“ A Dutch woollen manufacturer is in a situation just the reverse of this; his advantages are,

“ 1. He buys always the cheapest corn that can be got to make bread, and has no corn monopoly upon him.

“ 2. He has 5s. a quarter drawback on English wheat : computing freight and charges at 1s. 6d. per quarter, he is fed by the English cheaper than their own people by 3s. 6d. in every quarter of wheat.

“ 3. He has 2s. 6d. a quarter drawback on English malt, to make his drink come cheaper to him than to our own people.

“ 4. He has a penny in the pound drawback upon English leather.

“ 5. He has British coals at three shil-
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lings a chaldron duty, which is two shillings cheaper than the out ports, and seven shillings cheaper than the Londoners.

“ 6. He may buy beef, and other provisions, in Ireland, or any country where they may be had cheapest, so that he has *no* monopoly upon him in these articles.

“ 7. He may buy fish of any that sell cheapest, so that he has *no* monopoly upon him in that article.

“ 8. He may buy and wear the cheapest woollen he can get from any country ; and if he can buy cloth for his own use at four shillings a yard, he will, provided he can sell his own at five ; *no* branch of this trade therefore has a monopoly against the rest of the people.

“ 9. He may buy the cheapest linen he can get ; *no* country therefore has a monopoly against him in this article.

“ 10. He may buy the cheapest iron and
tin.

tin-ware he can get ; and so has *no* monopoly against him in these articles.

“ 11. He may procure all goods imported for his use where he will ; so that *no* particular port has a monopoly against him.

“ 12. He may ship all goods in the cheapest sailing ship, so that no shipping has a monopoly against him.

“ 13. The price of his goods is not raised by heavy customs on oil and soap.

“ It remains only to be observed, that the importation of provisions from Ireland would answer the same purpose immediately, that the cultivation of more land would answer only in a long process of time, if at all.

“ That this trade would greatly encrease navigation, as it would be wholly carried on in English and Irish bottoms.

“ That it would carry into Ireland in
N 2 return

return for provisions, great quantities of English articles of trade, as well necessities as superfluities.

“ That it would prevent a trade of the like kind to France, which enables her to support her West India Islands, and to victual her fleets; and at the same time, brings into Ireland from France many articles which England would otherwise furnish to her sister country.

“ And that it would prevent the exportation of raw hides to France, which come back to England manufactured into leather, and of tallow in great quantities, which is essential in ship-building. These articles always going to France with provisions, become entire freights.”

[It will be observed, that every argument in this sensible and scarce tract, does not apply at the present time, particularly what relates to France. But in return, it must also be observed, that the connection
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with France is only suspended ; no one can suppose that it is cut off for ever. After the conclusion of war, and peace is perfectly settled, the connection will revive, and perhaps be greater than ever ; therefore it can do no harm to keep the argument in memory.]

CHAPTER XIII.

**MEMOIRS OF GREAT BRITAIN, BY SIR
JOHN DALRYMPLE.**

Motives for this Publication. Indecent Arts made Use of to give it Consequence. Remarks. Detection of many falsehoods contained in the Work. Ignorance of the Compiler. Ignorance of Barillon. Vindication of Algernon Sydney. Strong Reasons for suspecting Barillon's Veracity. Madame Sevigne's Account of him. Observations. Vindication of Lord Russell. Observations.

IN the literary Anecdotes of the times, this work deserves to be noticed, not more for the baseness of its design, than the falsehood of its contents. It was generally understood and believed, that the work was countenanced, and the writer patronized, by the Earl of Mansfield; and when the great influence is recollected, which the Earl of Mansfield possessed in the

he King's closet at this time, no one can be surpris'd that the royal name was made use of to give the book importance and circulation. And the following sentence in the preface, that "His Majesty gave orders that he [Sir John Dalrymple] should have access to the cabinet of King William's private papers at Kensington," gave something more than colour to the use that was made, in the way of report, of his Majesty's approbation, and encouragement of the work. Not the least attempt was made to contradict or conceal this pretended participation in the compilement; but on the contrary, the most full, free, and even indecent expressions accompanied the many assertions of it; in order to give the work weight and authority with the public.

The contents of the work, and the circumstances attending the publication of it, naturally gave some affliction to the descendants and relations of those great men, whose characters were calumniated in it; and the nation, in general, received

the slander with indignation. The feelings, the opinions, the prejudices of all those persons were shocked who approved of the justice and necessity of the Revolution in 1688. They could not, and did not, for some time at least, give credit to the confident assertions of a great person's approbation of this attack ; because they conceived it to be impossible for any man to give his countenance to a book in which the friends of his family were represented as infamous.

The design was manifest. It had been premeditated some time ; the extraordinary industry shewn in the compilation sufficiently marked it. No event had happened which called for the necessity or propriety of such a work. It was a voluntary labour, undertaken and executed with a view to defame particular characters.

It was one of Lord Mansfield's common and favourite practices to establish facts upon inferences. He conceived that he
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shewed his ingenuity by this mode of displaying his abilities. And the inference from these papers is, that there was a great deal of knavery and villainy among the opponents of Charles the Second; therefore all opponents to a King's measures are rogues and villains. This is the aim of the book; with what view any person may see: it was published at the eve of the American war.

This doctrine is certainly unconstitutional; because it holds out a distrust of every gentleman, whether of high rank or great talents; and will apply equally to all parties and individuals whenever they oppose the measures of the Court. Consequently it goes to establish an opinion, that a King only is the proper person to be entrusted. All others are unworthy of any confidence. Public virtue is a chimera in every breast but that of a King. In this opinion, all public character is imposition, all patriotism is false, all honour is hypocritical. The conduct of every man is influenced by am-

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bition,

bition, lust, or avarice. This is so shocking a picture of our species, and so execrable must be the motive for drawing it, that every man who views it must detest it.

We will now examine the facts, or pretended facts, by which this horrid charge is supported. And this is the more necessary, because the many observations which were made on the work at the time of its appearance, in the hour of indignation, consisted more of acrimony than reply.

King William's papers seem to have been scattered about, and to have lain in a very negligent manner, until at, or near the time that Lord Rochford was made Secretary of State, which was in the year 1768; when they were found by Mrs. Rachael Lloyd, the house-keeper at Kensington. She made a packet of them. They were fifty-seven in number. They were examined by the late Lord Holland (Henry) Mr. G. Selwyn, and several other gentlemen: when the King heard
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of the circumstance, he sent Lord Rochford for the papers.

From this collection, the compiler of the "Memoirs" has selected a letter written to King William, which he has ascribed to Lord Godolphin; and intending to give some consequence to it, he calls it "The strongest Picture of all, as containing the true State of Parties, and of the King." [See the Appendix to the "Memoirs," part 2, page 5.] It is scarcely possible to give a proper answer to this gross imposition, without being guilty of extreme rudeness. This letter was not written by Lord Godolphin—it is not in that noble Lord's hand-writing. The house-keeper found it, and put it into the packet which she made up, and *docketed it herself*. There is no better authority for this letter being attributed to Lord Godolphin.

There is a letter ascribed to Lord Nottingham [idem page 78] which likewise is not in that noble Lord's hand-writing;
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and might, with equal propriety, have been ascribed to Dr. Franklin, if he had lived at that time; for it is as unlike, and as unworthy of one, as of the other.

In a letter ascribed to Lord Sydney, written to King William, [idem page 224] dated the third of February, 1691, and stated to be in King William's box, concerning Lord Godolphin's resolution to resign; Lord Sydney is made to say, "that he (Lord Godolphin) lays it most upon *his wife*," &c. It is impossible that this letter can be genuine, because Lord Godolphin had no wife at this time. His lady died in child-bed in the year 1678, and his Lordship never married again.

These few instances are sufficient to convince every impartial mind, that no perfect reliance can be placed on the authority of these papers. And it will further appear, to any one who is but tolerably conversant in the history of these times, that the writer himself, or compiler of the "Memoirs," was very imperfectly

fectly acquainted with the period he has undertaken to explain. For instance, he has printed a spirited letter to King William, [*idem* page 84] which he says was believed to be written by Mr. afterwards Duke of Wharton. This Mr. Wharton died in the year 1715, and the title of Duke of Wharton was not created until the year 1718. The characters of the two men were so different, it is impossible to mistake them. One was all virtue, the other all vice. Another instance of the like kind is, a remark, or more properly a sneer, which he makes on a letter written by Dr. Compton, bishop of London, to the Prince of Orange; he calls it "A curious Letter to be written by a Bishop;" [Appendix to the "Memoirs," part 1, page 334] because it relates to a corps of volunteers commanded by the bishop.

But the writer of the "Memoirs" should have recollected, or have informed himself who this bishop was. In his younger years he had been an officer in the army, in the regiment of horse, commanded by
Aubrey,

Aubrey, Earl of Oxford. Consequently there is nothing curious in it.

We will now proceed to his French authorities. These are the dispatches of Monf. Barillon, the French Ambassador in England, to his Court; to which, the writer says, he had access, by the order of the Duc d'Aguillon, the French Minister; who further ordered that he might have copies of some of them. But the writer does not say that he copied any of them himself, or that he compared any of the copies with the originals; so there is no authority whatever for the accuracy of these copies. And it is very singular, as well as extraordinary, that both Hume and Carte, who had access to the Depot des Affaires Etrangères, at Versailles, where it is affirmed these papers are deposited, have not said a word of their wonderful contents. The compiler of the "Memoirs" admits Mr. Hume's access to them, and Mr. Carte speaks for himself in his account of the materials he possessed before he undertook his history. There can be
no

no doubt of these writers being well disposed to make these papers public if they had seen them.

When Lauder wrote against Milton, he pretended to quote, and refer to a number of books in the libraries of Florence, the Vatican, and other places. Upon examination, it was discovered that there were no such books in those places; and that Lauder's book was a most base and infamous imposition. This fact is stated at length in the preface to Dr. Newton's edition of Milton.

However, if it is admitted that these papers are genuine, any person in the least acquainted with the history of those times, may see in them, that Barillon was very ignorant of the most important transactions in both England and Holland. And that the writer of the "Memoirs" is not much better informed in the observations he makes.

The principal and most interesting feature

ture in Barillon's dispatches, consists of his assertions,—that he has secured a party in the *English Parliament* by bribery, to act agreeably to the wishes of the French King; and to ascertain this pretended fact, he gives a list of the names of twenty-one persons, whom he says he has bribed with the sum of money annexed to each name [Vide Appendix to the Memoirs, p. 316 and 317] to which the compiler of the "Memoirs" makes this addition, "the names of almost all the above persons are to be found in the House of Commons as active persons at that time." This was in the year 1680. If the compiler had given himself the trouble to examine the list of the House of Commons of that year, he would have found that no fewer than nine of the persons out of the twenty-one were not in Parliament. These were, Sydney, Francisland, Baber, Crofs, Armstrong, Hicdall, Compton, Hotham, and Le Pin.

Barillon's total ignorance of Sydney, is in nothing more palpable than his assertion

tion in his dispatch, dated on the 14th of December, 1679, wherein he says, that Sydney was elected for that Parliament. The assertion is totally unfounded; he was not returned for any place: yet Barillon affects great intimacy with Sydney. At this time Barillon had been in England above two years. The new Parliament was elected in the summer of 1679, and met for business in the month of October of that year.—Is it possible, or will any one believe it, that from the middle of October, when Parliament met, to the middle of December, when Barillon wrote, that Barillon could be ignorant of Sydney's not being in Parliament? or that he could say in his dispatch, (dated as above) when speaking of Sydney's connections with those who opposed the Court in Parliament, "*il a été élu pour celui ci.*"? (He was elected for this present one.) If there be such a dispatch, and it is genuine, such profound ignorance is not to be exceeded in the history of diplomatic transactions.—But let us view this matter a little farther. Algernon Sydney was a man of

high consideration ; of “ great views,” says Barillon. He was popular in England, and known in France ; and by a particular circumstance was known to the French King also, who wanted to purchase his horse, of which Sydney being informed, he immediately shot the horse, saying, “ that his horse was born a free creature, had served a free man, and should not be mastered by a King of slaves.” This fact must be allowed to be a pretty strong mark of his love of liberty, and hatred of tyranny. And though the inference from this fact is, that such a man would never become the pensioner of an absolute King, who would not suffer his horse to be rode by one ; yet all this strengthens the more than probability, that Barillon must consider it of some consequence to his character, to attach, or at least pretend to attach, this man to his party ; and which could only be to enhance his own reputation with his Court. As to the pretended fact of Sydney’s receiving a bribe from the French King, it stands upon the single testimony of Barillon, unsupported

ported by any collateral evidence or circumstance whatever. It seems to be a tax upon his fame. As he was not in Parliament, what service could he perform, in the interest of the French King, to deserve this supposed pension? Neither his character, nor the state of affairs, afforded him the least opportunity for exertions of any kind out of Parliament. As no symptom of this complexion has ever fastened to his character, we must examine the veracity of this charge of bribery by the degree of credit that may be due to Barillon's reputation.

In Lady Ruffel's letters, and other books, it is observed, that Barillon was not in affluent circumstances when he came to England, which was in the month of August, 1677. He staid in England until the Revolution, when he escaped to France. Of the alteration in his person and circumstances when he arrived in France, Madame Sevigne takes notice in her letters. In her letter dated the 17th of January, 1689, she says, " Barillon is arrived; he

“ is grown very fat,” &c. And in her letter of the 21st of the same month, she again says, “ I have seen Barillon who is “ grown very fat,” &c. And in her letter of the 26th of the same month, she further says, “ Barillon is not changed for “ the worse after ten years embassy.” And in her letter of the 21st of March, in the same year (1689) she says, “ Barillon is RICH,” &c. From these words it may be fairly inferred, that Barillon was not rich when he came to England, and that during his residence in England he encreased in corpulence and in affluence.

From these facts, a suspicion attaches to Barillon's character, that though he has charged the money in his account, yet that is no proof of the payment of it; and it is a little singular, that of this last account of Barillon (and it is the only one in the “ Memoirs” in which the name of *Algernon* Sydney is given) there is not the copy of the French original; although there is the French copy of every

every other of Barillon's papers. The compiler of the "Memoirs" should have assigned his reasons for omitting the French of this particular paper. It may also be remarked; and it deserves distinct observation, that Barillon is not very tenacious concerning the truth of his intelligence. In matters of the greatest notoriety, as well as of the greatest moment, he is totally mistaken: in the month of September, 1688, when the Prince of Orange was on the point of embarking for England, he seems to persuade his Court, that the Prince of Orange dare not undertake the expedition—and if he does, that no man [in England] who has any property will declare for him. [Appendix to the "Memoirs," part 1, p. 285, 286.] This plainly and indisputably shews, that Barillon had not, as he pretended, the confidence of the Whigs. They did not trust him. Madame Sevigne, in her letter on the last day of December, 1688, says, that "Madame Barillon is in great pain for her husband; but it is said, that he is in safety." This shews that he

was obnoxious to the Whigs. He knew none of their important secrets if they had any. They depended more upon the integrity and cement of principle, than upon the manœuvre and intrigue of interest. Charles and his brother James throughout their whole conduct relied upon the latter.

From this short character of the two parties, founded, it is presumed, in strict truth, the reader will see where the predominance of French influence lay, and the necessity Barillon was under to support his credit with his master, to assume (no matter how falsely) an influence also with the other party.

He makes Sydney a Member of Parliament to give colour to his charge of paying him money. The motive obviously connects the two falsehoods, and justifies, under all the circumstances, this fair and manifest conclusion, That if the dispatch be genuine, Barillon put the money into his own pocket,

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The uniform tenor of all testimony, respecting the virtues and principles of Sydney, his high and dignified demeanour upon all occasions, are sufficient to secure his character from the suspicious and interested calumny of a perfidious French Minister, whose dispatches abound with falsehoods, and who confesses himself to be a ——— (the reader will fill up the blank with what word he pleases) and who, instead of limiting his conduct to the fair objects and business of a public embassy, says, in his dispatch dated on the 5th of December, 1680, to his master, “ I send your Majesty the names of the Members whom I have engaged in your interest.” [Appendix to the “ Memoirs,” p. 285.] Is not this act criminal in a public Minister?

Wicquefort says, “ That an ambassador is not allowed to concern himself in the parties that are formed in a Court, nor to enter into the factions that divide a State where he negotiates. He ought to have no communication with the

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“ party

“ party that declares against the Sovereign, or against his First Minister.”
Wicquefort's Ambassador, page 318, edit. 1716.

“ In the year 1650, there arose some
 “ differences between the Prince of Orange
 “ and the States of Holland. Some of
 “ their deputies were sent prisoners to
 “ the Castle of Louvestein, and the Prince
 “ carried the arms of the State before
 “ the city of Amsterdam. Anthony le
 “ Brun, Ambassador from Spain, who was
 “ otherwise an able and wise Minister,
 “ thinking he did a grateful thing to
 “ the Prince, went and offered him the
 “ arms of the King, his master, for the
 “ more speedy reduction of the place;
 “ but the Prince answered him, *That the*
 “ *King of Spain had no right to meddle*
 “ *with the domestic affairs of the country;*
 “ *and that neither he nor the States had any*
 “ *occasion for his arms: that if the King*
 “ *of Spain should cause his troops to advance,*
 “ *their little misunderstanding would soon*
 “ *cease, and all the forces of the State would*
 “ be

"be seen to unite to oppose the foreigners."
Idem, p. 321. Ministers, in all countries,
 would do well to remember this wise
 answer of the Prince.

What Barillon says of Lord Ruffel, is not so pointed as what he has said of Algernon Sydney. He does not accuse Lord Ruffel of taking money. On the contrary, he says, that Lord Ruffel declared he would have no communication with any person capable of being gained by money. The words are (upon Barillon offering to furnish money to bribe those in Parliament whom Lord Ruffel thought useful, Barillon states that Lord Ruffel replied) "That he should be very sorry
 "to have any commerce with persons
 "capable of being gained by money;
 "but he appeared pleased to see, by this
 "proposal, that there is no *private* un-
 "derstanding between your Majesty and
 "the King of England to hurt their con-
 "stitution." [Appendix to the Memoirs,
 p. 133.]

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The real truth of the whole affair is simply this, That Lord Ruffel and his friends, knowing Charles the Second had a *private* correspondence with the French King, they considered his levying a military force, under a pretence of war with France, as no other than a *secret* design, formed, with the *confidential* concurrence of the French King, to overturn the English constitution, and thereby to make himself arbitrary and absolute ; Lord Ruffel was desirous of obtaining, if possible, accurate information upon this subject : therefore supposing, or admitting, for a moment, that any of Barillon's dispatches are founded in entire truth, and that they have been faithfully copied, the whole contents go no further than to prove this distinct and single fact, that his Lordship's sole object in treating with France, was to prevent the French King from assisting the designs of Charles to subvert the English constitution. No person whatever can put any other construction upon Barillon's own statement. He writes to the French King [Appendix to the Memoirs, p. 138.] That Lord Ruffel
had

had stated to him, the danger the people of England were in of losing their liberties by the military force which Charles was levying, under a pretence of war with France. He was therefore solicitous, that the true design of these preparations might appear, and presses, that it may be known to the party, says Barillon, "That your Majesty has no connection with the King of England to oppress them; but that you will not suffer him, under the pretence of an imaginary war, to find means to bring them into subjection."

From these words, supposing the dispatch to be genuine, (for that can never be repeated too often, because so many assertions of Barillon have been shewn to be wholly false) it may be asked of the most candid and impartial person, whether there is any ground, or even colour, for charging this worthy and amiable nobleman with shamefully intriguing with France? On the contrary, is it not manifest, that his conduct was honourable, and that his design was laudable? He felt a parental tenderness
for

for the constitution, and a constant anxiety for the event of those preparations, which he knew the Court was making against the liberties of his country.

This state of politics is briefly but clearly explained in the “Memoirs of the Life and Ministerial Conduct of the late Lord Viscount Bolingbroke.”

“After the return of Charles II. the nation had a specimen of the true patriotism in the conduct of his Ministers, Clarendon and Southampton, who thought a better proof of loyalty to their Master could not be given, than by a firm adherence to the *constitution*. The Duke of Albemarle had the honour of restoring *him*; but to these two noble Earls, indisputably the glory belongs of restoring *it*. Soon after the death of the latter, a faction was formed, by a coalition of parties, against the former, and the King, though he had seen the error of his father, in respect to the Earl of Strafford, acted the like part with regard to the Earl of Clarendon; one circumstance only ex-

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cepted,

cepted, which was his concurring in that measure to which his father was forced. This faction, which, in the guise of patriots, had accomplished the ruin of the Chancellor, came very soon after into power, and were distinguished, with great propriety, by the title of the *Cabal*. They first endeavoured to secure the King, by undertaking to put him in possession of a plenitude of power." They drew him into a connection with France, and a dislike to the Dutch. "He was exceedingly caressed by the French King, who found means to purchase Dunkirk for a song; the stores and other things found there, being worth all that was paid for it, and no sooner had it in his hands, than he caused a medal to be struck, to proclaim his own wisdom and Charles's folly. He encouraged the Dutch to undertake the first war in that reign, that the maritime powers might weaken each other by sea, and he assisted them against England." [P. 55, and 62, edit. 1752.]

Lord Russell had sufficient ground for his
appre-

apprehensions and fears, that the French King might join Charles in his plan to destroy the English constitution.

In the following few lines are collected all the charges made against Lord Ruffel.

Lord Ruffel and Lord Hollis were pleased, “ that the King of France is convinced
 “ it is not his interest to make the King of
 “ England absolute master in his kingdom.
 “ —They are glad of your Majesty’s good
 “ intentions.—Lord Ruffel would under-
 “ hand clog the King’s measures; and would
 “ be very sorry to have any commerce
 “ with persons capable of being gained by
 “ money.—His friends wanted the dissolution
 “ of the Parliament, which they
 “ thought could come only from the help
 “ of France.”

From these charges, after what has been stated, his fair and unspotted fame may be safely entrusted to impartial posterity. It is a legacy sealed with his blood; and it
 is

is no more than gratitude to take it with the same honour that it was given.

“ To Lord Ruffel’s activity and vigilance it was owing, that the fears for liberty from the power of France were removed ; that Lord Danby, who seconded his master’s arbitrary designs was disgraced ; that the Duke of York was sent abroad ; that a Parliament was dissolved, which had shewn more ardour to enlarge the King’s prerogative than maintain the constitutional rights of the people ; that the army was disbanded, which seemed intended rather to enslave the nation than to attack a foreign enemy ; and that friends to their country were admitted into council in opposition to the King and his cabal.

" From the testimonies of historians, of all parties, concerning the integrity, principles, and public conduct of Lord Russell, it appears, that his Lordship was a man of noble and generous sentiments ; the honour of the age he lived in ; a zealous pro-
testant ;

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testant; eminent for the simplicity of his manners, and the purity of his life : incapable of telling a lie ; and that he fell a martyr to the religion and liberties of his country."

CHAPTER

CHAPTER XIV.

LATE EARL OF MANSFIELD,

(LORD CHIEF JUSTICE.)

▲ *Character supposed to be written by Sir John Willes. Answer to it, ascribed to Lord Mansfield. Several Particulars concerning Lord Mansfield. His Partiality in all Trials for Libels. The Declaratory Act of the Law of Libels made to correct his Doctrine. His Design to take the Opinion of the twelve Judges upon it. His Design in the House of Lords on the same Subject frustrated by Lord Camden. Lord Mansfield makes a third Attack on the Rights of Juries, by reviving the Star-Chamber Mode of prosecuting Libels, by Attachment. Mr. Dunning's first Splendour. Remarkable Case of a poor Woman, and spirited Conduct of Sir Fletcher Norton upon it. Mr. Vaughan's Attempt to corrupt the Duke of Grafton, with the Duke's Affidavit and Papers, and Lord Mansfield's Opinion. Heads of a singular Trial concerning the Sale of Places.*

VOL. I.

P

Letters

Letters on the same Subject. Extraordinary Negotiation in the Year 1778, concerning the Appointment of Lord Chief Justice of the Court of Common Pleas. Case at Surrey Assize. Lord Mansfield's Speech on the Duty of Four and an Half per Cent. on the Produce of Grenada. Lord Mansfield's Conduct on the Question concerning Literary Property. His Ambition to be thought a Mæcenas. Patronizes Sir J. Dalrymple and Mr. Lind. His Ambition to be thought a Statesman. Speech against suspending Power. Declares Great Britain has passed the Rubicon. Bon Mot on the Howes. Lord Sandwich's Remark on the Howes. Lord Mansfield's two last Charges to Juries in Trials for Libels on Mr. Pitt.

THIS great man's character has been variously represented; and probably the complexion of it will continue doubtful for ever. There was a character of him so early as the year 1746; written, as it was very generally believed, by Sir John Willes, who was Lord Chief Justice of the Common Pleas. It was printed in the Broadbottom Journal;

Journal; but as that is now very scarce, the reader may expect to see an extract from it here.

OLD ENGLAND; OR THE BROADBOTTOM
JOURNAL, DEC. 27, 1746.

“ I should be sorry to see a Scotchman upon an English bench of justice for several reasons, which I hope may occur to the wisdom of the great in power, before such judges are appointed; as it may not be very proper for me to mention them..... An Englishman ought not to be put under the dominion of a Scot.

“ I remember an old friend of mine used to tell me of a termagant Scot, as Shakespear phrases it, that domineered at the bar of one of our courts of justice, in the reign of one of our Kings, who was *second* of his name: probably *Charles* or *James* the Second, for it is natural to believe the *plaid* might meet with encouragement here in these reigns. This Scot emerged from his native wealds, rocky caverns, and mountainous heights, pretty early in life, to *sincer*

over a Scotch education, with a little English erudition, and undoubtedly for preferment too. He brought along with him the same principles of government and loyalty, as his country and family were remarkable for, and what his brother carried over to Rome, like apples to Alcinous, or coals to Newcastle. One would think such an opportunity might have had some gentle influence on the rugged nature of our emigrant, his pauper pride, and native insolence; but it happened otherwise; for the Scot could not alter his nature; and so, in the midst of all the learning of our courts, he continued still a very Scot.

“ Full of the *tatterdemallion* honour of the man of quality, forsooth! of his own country, he used to insult the English suitors in harangues of virulence and abuse. He had no persuasion in his manner, sweetness in his voice, nor energy in his expression; no variety of turn in tone and cadence, adapted to the purport of the matter he treated, but was curst with a loud clamorous *monotony*, and a disagreeable discordance in
his

his accents, as struck so harsh upon the ear, that he seemed rather to scream than plead, and from thence was called Orator Strix, or the Caledonian Screecher. [*In ornithology, Strix means the Grey Owl. See Forster's Account of Birds from Hudson's Bay, in the Philosophical Transactions, Vol. 62.*] He was as indelicate in his words, as his uncleanly countryman Sawney in the play. So that he deformed the amiable brow of oratory and beauty of debate, with abusive Scottiscims and obscene language; in-fomuch, that the fairest cause in his hands, was sure to carry out of it a tincture of foulness. He assumed a bullying audacity in his manner, and seemed, by a pertinacious importunity, to overbear, rather than gain, the bench. This faculty however recommended him to the notice of such solicitors as dealt among the *canaille*; which, being much the major part of the profession, supplied him with a competence of business, at the same time as he treated these *abjects* (and indeed very justly too) with haughtiness and contempt; for these fel-

lows, like spaniels, or termagant wives overpowered, fawn under correction.

“ Though learning was very cheap in his country, as it might be had for a groat a quarter, so that a lad only went two or three miles of a morning to fetch it, and it is very common to see there a boy of *quality* lug along his books to school, and a scrip of oatmeal for his dinner, with a pair of brogues on his feet, posteriors exposed, and nothing upon his legs : I say, notwithstanding these *advantages*, he did not appear to be a man of more learning than one of our l—ds or country squires, nor to understand the elegance of fine writing ; and yet had the good fortune to make an alliance by marriage with an English family of distinction, which procured him not only a much higher preferment in his own way than he deserved, or in the utmost stretch of his hopes could expect, but had like to have pushed him up to the summit of the bench ; if a person of real merit, and a genius in business, had not stepped in between and
cried

cried out *first oars*. But an accident suspended the occasion, and very well it did, if Strix had been the person to be preferred; since it would have proved an indelible reflection upon us to see a Scot in so high a station, when so many of our own countrymen were infinitely better qualified, and more deserving of preference. But 'tis remarkable our orator Strix ever since funk gradually in his reputation and business, and became despised in his turn, by the very practisers he had maltreated before.

“ 'Tis said (continued my old friend) Strix's ill-manners drew upon him so severe a scourge, from a hand he little expected, that he had reason to repent of hiring out his lungs to calumny and abuse. Though he used to boast he was above the reach of reprisals, either from words retorted upon him in *his court*, which I apprehended was that of the *Quarter Sessions*) or from a bitter pen from without: As he pretended to be in both cases, equally under the protection of his profession; and that consequently an author must inevitably incur the penalty of

a contempt of *his* sessions-bench, however cautiously or perhaps innocently, he may have wrote or screened himself under an unintelligible word, obscured by a dash from the initial letter to the last : Since he would fain insinuate his *sessions-court*, being in such a case, subject to no jury, had a right to put such constructions upon words as it should think fit, and would therefore punish accordingly. This was a new doctrine, and a most dangerous one too, if it had prevailed this side the Tweed ; which, at the same time that it shewed the value we ought to put upon juries, and the *habeas corpus* act, proved plainly what was to be expected from this Scot, if he should ever ascend the bench ; or from any other person, who should indiscreetly proclaim himself so dangerous an enemy to British liberty. *Attend to this, Oh ! ye Southern Britons, and MARK HIM FOR EVER,*

“ A gentleman denying our Scot’s position, insisted that in such a case, our situation here must be as bad as that under Spanish inquisition ; and that his *bench* cou

do more than our King, or the law itself; which he apprehended could not take away a man's liberty, till he had been tried by a jury; except in the case of some notorious misbehaviour in open court: And that as man is a fallible creature, THE CHAIRMAN upon the bench is consequently no more; and therefore might mistake the purport of words so supplied, and wrest them to the loss of a man's liberty, than which nothing is more valuable to an Englishman. He urged also, that no word ought to be explained into one certain meaning to a man's disadvantage, if it could bear a different explanation as well in another way; as for instance; suppose I have a law-suit with a lady about her *cart*, and that I fight the *weapons of law* through in my defence, on which she writes to me thus, *Sir, I will complain to the court of you*: I underwrite, and return her letter with these words, *Damn your C——t, Madam*. Would it not be very hard that this imperfect word should be construed *court*, since it can be as well made out by more monosyllables than one, every bit as pertinent to the matter,

but

but particularly by the word *cart*?—Orator Strix became for once confounded, and utterly incapable of defending his position; so that 'tis plain, that nothing can be more absurd and arbitrary in a CHAIRMAN, than to assume a right to annex meanings and constructions to imperfect words, to the depriving any English subject of his liberty."

This paper provoked Lord Mansfield, then Mr. Murray, exceedingly; and he wrote an answer to it, which he entitled, "The Thistle." As this paper also is very scarce, the reader will not be displeased with seeing an extract from it also; at least from such part of it as is in reply to the preceding extract.

"There are some few English gentlemen, and but few, at the English bar; and there are still fewer on the bench. But without those few, how unequal would both be, how degenerated from the dignity of the profession! Yet though good behaviour and politeness be generally fruits of
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a generous birth, we do not find it always productive of superior oratorical talents. The present English bar is a pregnant instance of this remark. For had it not been for the few Scotch there, particularly *two gentlemen* of that nation, who support oratory as far as the stated jargon, and limited pedantry of the bar will permit, standers-by would be puzzled to know what was intended by the pleadings there.

“ But these gentlemen, no less conspicuous for knowledge and virtue, than for politeness of manners and a noble extraction, have gone great lengths, the few years they have honoured the bar with their attendance, not only to have reformed its language, but to instruct their fellow-barristers in the methods, forms, and connections of an argument, of which the English generally are most shamefully destitute. Even the furred *noddies* on the bench have benefited by listening to the orderly and nervous discourses of these young Scottish pleaders. Yet are they become the envy of both bench and bar. Of the latter, because they
out-

outline all that fill it, and of the former because they are able, and do daily, instruct those who sit upon it.

“ Hence, and because you dread a reformation in the modern scandalous practice of the profession, should an upright discerning Scotch lawyer come to preside on the bench, is one of those distinguished Scotch barristers become the object of your scandal and obloquy, of your virulence and even aversion. You purposely step out of your way to abuse him, as if your whole *journal* was levelled at him, and the principal view of your scribbling was to injure and destroy, one who is no less an ornament to the English senate and bar, than to his family and country.

“ If Mr. M——y, or Strix, as you injudiciously call the most poignant and harmonious orator of the age, be ally'd by marriage to an English family of distinction, he has brought into it the highest personal merit, and the noble blood of all the ancient nobility of Scotland: A nobility known all
over

over Europe, and distinguished for hospitality, valour and patriotism, long before the name of Englishman was heard of.

“ No nation in Europe can boast of a more ancient nobility than the Scotch; nor any that has so little reason to plume themselves on ancient blood and honours as the English.

“ Therefore, though Mr. M——y has married into a family as distinguished and ancient, as most English families are or can be, yet persuade not yourself that he has acquired any new honours by the alliance. In so venal, undiscerning an age as the present, perhaps his high merit in his profession had been unheeded without interest at Court. But, neither his alliance nor merit, as an advocate, nor his other uncommon excellencies and virtues, were sufficient to balance the malice and envy of those of his own profession, and particularly of a *lecherous, little elf in fur*, or he had been already raised to a summit whence he could injoin by precept those
virtuous

22 LATE EARL OF MANSFIELD,

virtuous maxims which he can now inculcate by example only.

“ But, you say, an accident suspended
“ the occasion (of Strix’s being raised to
“ the summit of the bench) and very well it
“ did, if Strix had been the person to be
“ preferred ; since it would have proved an
“ indelible reflection upon us to see a Scot
“ in so high a station, when so many of our
“ own countrymen were infinitely better
“ qualified, and more deserving of pre-
“ ferment.”

“ But why should it be an indelible reflection on Englishmen that a Scot, with more merit and virtue than any of his cotemporary pleaders, should be placed in high station. The Union gives him equal right with the English professors the law, and fame has set him far before all those of his standing.

“ I remember a late eminent English lawyer, pushed up by fortune to the summit of his profession, who could

bear an Irishman, because, in his younger days, he had been used, as he *deserved*, by a gentleman of Ireland, whom he had aspersed to a lady they both courted.

“ ’Tis peculiarly remarkable that the prejudice to the Scotch and Irish in England, is confined to the *males* only; the English *fair* being too discerning and generous to indulge a native, interested, unjust *prejudice* to all who are not born among themselves. But this is not the only instance of the superiority of the English *fair* over Englishmen. The first are as open, frank, generous, gay, vacant, sprightly, polite, compassionate and humane, as the latter are dark, fullen, niggardly, but to indulge their own passions, dull, stupid, vain, prejudiced, cruel and merciless. Foreigners observe, and justly, that the men and women of England differ as much from each other, in humour, sentiment and comportment, as any two nations of Europe.

“ I have kept you company thus far in
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a dirty road into which you led me, much against my inclination, being much more delighted in praising than fatyrizing. But it is high time that we part; you, if you have any shame, to repent and atone publicly for your scandalous general libel, on a brave, faithful, ancient nation, and your particular defamatory attempt on the character of a gentleman, whose virtue and eloquence would do honour to ancient Greece and Rome: and I, to take pride to myself for holding up the mirror to you, which I hope will bring you to a sense of your duty, as a fellow-subject, a neighbour, and a gentleman.

“ If I have not drawn your countrymen as amiable and comely as they fancy themselves to be, are they not obliged to you, on one hand, who forced the pen into my hand, and to *truth* on the other, which obliged me to render them *justice*? Am not I warranted from the known character of your countrymen, and from your writings particularly, who are but the echo of Englishmen, to produce them unsteady,

steady, prejudiced, ungrateful, vain, fordid, cruel, and immoral? Would not all the connoisseurs think me either an ignorant, or a cringing, fawning, flattering painter, if I had drawn Englishmen less natural and deformed? Should I not be deemed a spaniel cur, a time-server, an unnatural member of a society of as brave a people as the sun shines on, if I did flatter a nation that treat my country and country-men arrogantly, insultingly, ungratefully, and unjustly?

“ There are certain bounds beyond which passiveness becomes a fault instead of being a virtue; and you have driven my patience to that critical point by the licentiousness of your pen: therefore such quarters as you gave you should not murmur at receiving; and the rather, that you spoke the language of prejudice, envy, and malice, I speak that of *truth* only.”

There was another character of Lord Mansfield, supposed to have been written by a subsequent Lord Chief Justice of the Common Pleas (Lord Camden) in the

well known tract, entitled "A Letter on Libels and Warrants, &c." But as that tract is in many hands, and in the "Collection of Scarce Tracts," it is not necessary to say more of it in this place. Every person can refer to it.

The admirers of Lord Mansfield have always shewn themselves dissatisfied with any statement of such parts of his conduct as tended to the diminution of his celebrity. They assert his impartiality, his wisdom, his penetration and patience.

On the contrary, those persons who have declared his Lordship capable of committing every enormity whenever he had opportunity to advance the power of the Crown, or trespass on the liberty of the subject, have been offended whenever he has been complimented with the titles of a Great Lawyer, and an Upright Judge. They arraign his principles of law, and deny his impartiality.

Between these extremes, Lord Mansfield's

field's true character will not be easily nor perhaps accurately defined. That it lay between them is true; but to which it most inclined, may, in the opinion of some persons, be difficult to ascertain.

In the year 1738, Lord Mansfield having married one of Lord Winchelsea's daughters, attached himself to the Whigs. In the year 1742 he was made Solicitor General, and brought into Parliament for Boroughbridge. In the year 1754 he was made Attorney-General, and in 1756 Chief Justice, and created Lord Mansfield.

During the whole Administration of the Pelham's, he adhered to the Whigs, and particularly to Mr. Pelham, whose confidence he obtained much in the same way that his friend Mr. Stone obtained that of the Duke of Newcastle. They, (Stone and Murray) were accused of being Jacobites, and the accusation was brought before the House of Lords. But they had dexterity and influence sufficient to stop the progress of the enquiry. Mr. Stone then being sub-governor to the

Prince (the present King) was supposed, by some people, to conduct himself in the capacity of a double spy. He owed his appointment to the Duke of Newcastle, for the purpose (as was conjectured) of giving the Duke information of the proceedings and transactions of Leicester-house, and preserved his interest at Leicester-house by giving information to Lord Bute of the designs and transactions of the Ministry, in which he was assisted by his friend Lord Mansfield, then Mr. Murray. Whether these opinions are strictly correct or not, it is certain that Lord Bute had authentic information of all the projects and measures of the Ministry, even at the time when the politics of St. James's and Leicester-house differed most.

It has been the great felicity of Lord Mansfield's reputation, that his conduct has generally been viewed on the favourable side only. And that such detached parts of it as reflected most to his honour have been principally those which have been held up to public view. If the
whole

~~whole~~ of his conduct had been fairly and impartially examined, it would in many points have brought to our remembrance the conduct of those learned chiefs, Trevelyan, Keyling, Scroggs, Jefferyes, and some others.

There is an anecdote of the great Lord Bacon, and it is well authenticated, which cannot be improper to mention in this place. It is in a paragraph or two in an excellent book of a very eminent and worthy judge, which is much commended by those who do not belong to the profession, as a collection of good principles; and if any thing could be a warning to the intemperate zeal of *Political Judges*, perhaps some advantage might redound from a frequent repetition of this anecdote. Mr. Justice Foster, in his discourse upon high treason, has the following passage, which may be usefully read by any person, and at any time, without regard to the particular subject and occasion of it, p. 199. " This case therefore weigheth

very little, and no great regard hath been paid to it ever since."

" And, perhaps, still less regard will be paid to it, if it be considered that the King, who appeareth to have had the success of the prosecution much at heart, and took a part in it unbecoming the Majesty of the Crown, condescended to instruct his Attorney-General with regard to the proper measures to be taken in the examination of the defendant. That the Attorney, at his Majesty's command, submitted to the drudgery of SOUNDING THE OPINIONS OF THE JUDGES, upon the point of law, before it was thought adviseable to risque it at an open trial. That the judges were to be sifted separately and soon, before they could have an opportunity of conferring together. And that for this purpose four gentlemen of the profession, in the service of the Crown, were immediately dispatched, one to each of the judges; Mr. Attorney himself undertaking to practise upon the Chief Justice,

of

of whom some doubt was then entertained.

“ Is it possible, that a gentleman of Bacon’s great talents, could submit to a service so much below his rank and character! But he did submit to it, and acquitted himself notably in it.

“ AVARICE, I think, was not his ruling passion. But whenever a false ambition, ever restless and craving, overheated in pursuit of the honours which the Crown alone can confer, happeneth to stimulate an heart otherwise formed for great and noble pursuits, it hath frequently betrayed it into measures full as mean, as Avarice itself could have suggested to the wretched animals who live and die under her dominion. For these passions, however they may seem to be at variance, have ordinarily produced the same effects. Both degrade the man; both contract his views into the *little* point of self-interest, and equally steel the heart against the rebukes of conscience, or the sense of true honour.

Q 4

“ BACON

“BACON having undertaken the service, informeth his Majesty, in a letter addressed to him, that with regard to three of the judges whom he nameth, he had small doubt of their concurrence, ‘Neither, sayeth he, am I wholly out of hope that my Lord Coke himself, when I have in some dark manner put him in doubt that he shall be left alone, will not continue singular.”

These are plain naked facts; they need no comment. Every reader will make his own reflections upon them. I have but one to make in this place. This method of *forestalling the judgment of a court in a case of blood, then depending*, at a time too when the judges were removeable at the pleasure of the Crown, doth no honour to the memory of the persons concerned in a transaction so insidious and unconstitutional; and at the same time, greatly weakeneth the authority of the judgment.”

[See Bacon's letters, in the 4to edition
of

of his works, 1740, Lett. 111, 112, 114, 116, 117. Others of his letters shew that the same kind of intercourse was kept up between the King and his Attorney-General, with regard to many cases then depending in judgment; particularly in the case of one *Owen* executed for treasonable words: in that of Mr. *Oliver St. John* touching the benevolence, in the disputes between the Courts of King's Bench and Chancery in the case of the *præmunire*: and in the proceedings against the Countess of Somerset."

It is generally allowed, that in most cases between subject and subject, he shewed great penetration and judgment. He possessed a talent, if it may be called so, of discovering the merits of a cause before it was half heard. This quickness, however, sometimes betrayed him into too early a propensity in favour of one of the parties. And in this precipitation he was more than once or twice unjust. So difficult it is, for the most acute understanding, at all times, to discover hidden truths;

truths; and so dangerous it is, to entertain a conceit of possessing, by intuition, a talent superior to the rest of mankind. Yet this is perfectly true of Lord Mansfield. Some lawyers have occasionally assumed a course of imitation; but the attempt has been so clumsy and inadequate, it scarcely deserves the name of a caricature.

In all those political causes concerning the press, in which the Crown was party, he was partial in the extreme. His rule of law uniformly was, that the Crown was never wrong in those causes. To the liberty of the press he was a sincere and implacable enemy. His definition of this liberty was, a permission to print without a license, what formerly could only be printed with one. In trials for libels, he has been heard to deliver such language from the bench, as ought to have flushed the jury with indignation. In those trials, his invariable practice was, in his charge to the jury, to make a laboured reply to the defendant's counsel. Will any candid person

person say this was proper conduct in a judge who ought to be strictly impartial? This is not the language of prejudice—for the truth of it an appeal may safely be made to all those persons who are yet alive, who heard him upon those occasions.

But a stronger proof cannot be given of Lord Mansfield's general misconduct and mis-directions to juries, in cases of libels, than the late *declaratory* act of Parliament of the rights of juries, which was brought forward by Mr. Fox and Mr. Erskine, and was supported by a considerable part of the Ministry. The artful and dangerous practices of Lord Mansfield (in these political trials, so interesting to public liberty) to which he had through life most tenaciously adhered, and had ardently maintained to be law, were totally annihilated and done away. Juries were restored to their constitutional rights, which fixes upon his memory and character a more indelible stigma, than could have been inflicted by an article of impeachment. The many
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transgressions he had committed on law, justice and humanity, rendered this act of Parliament absolutely necessary. Lord Camden, though far advanced in years, vigorously supported the bill in the House of Lords, and condemned all Lord Mansfield's doctrines in terms of just asperity.

There is a fact not less respecting Lord Mansfield's favourite opinion, than his great design upon the rights of juries, in all questions concerning the liberty of the press, which distinguishes him to have been from principle, as well as study, perhaps, the most dangerous enemy to the constitutional rights of juries, that ever sat in a court of justice, since the time of the star-chamber.

The fact here alluded to, happened on the trial of John Williams, in the month of July, 1764, for re-publishing the North Briton in volumes. Serjeant Glynn, who was counsel for Williams, said, with a strong emphasis, " That in the matter of libel, " they were the proper judges of the law, " as

“ as well as the fact; that they had the
 “ full right to determine, whether the
 “ defendant had published the North Briton
 “ with the intent as laid in the Attorney-ge-
 “ neral’s information.” Lord Mansfield stop-
 ped him short, and declared in a very strong
 and menacing manner, “ That if Serjeant
 “ Glynn asserted that doctrine again, he
 “ (Lord Mansfield) would take the opinion of
 “ the twelve judges upon it.” The learned
 serjeant instantly saw the snare, and the
 design that was concealed under it. He
 was sensible of the danger to public li-
 berty, in submitting a question which was
 to be worded by Lord Mansfield upon the
 rights of juries, to the opinions of the
 twelve judges at that time. No one could
 doubt that a considerable majority of the
 twelve judges would confirm all Lord
 Mansfield’s doctrine concerning libels, and
 particularly all his Lordship’s limitations
 of the rights of juries. The learned ser-
 jeant therefore, with great prudence, and
 a great regard for the rights of juries,
 saw that it was more proper to submit,
 than to give Lord Mansfield an opportu-
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nity of obtaining an authoritative confirmation of his innovations in the constitution. Thus, by a device of Lord Mansfield, the rights of juries upon this great point hung as it were upon a single thread. Well might Judge Willes say, "*mark him!*" Had Lord Mansfield's project taken effect; and had the majority of the judges acquiesced, of which it is more than probable he had no doubt, it must have been extremely difficult, and next to an impossibility ever to have recovered the rights of juries, which Lord Mansfield had usurped, and which usurpation had been confirmed by the judges.

Upon another occasion, Lord Mansfield attempted the same device, but the weakness of his nerves prevented the design being carried into effect. This was in the year 1770, when he gave a paper to the clerk of the House of Lords, containing the opinion of the Court of King's-Bench, upon one of the trials of Junius's letters.

The House of Lords was summoned at
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the request of Lord Mansfield, on Monday the eleventh day of December. Great expectations were raised. Lord Mansfield's doctrines concerning libels had been much canvassed in the House of Commons, in consequence of a motion made by Serjeant Glynn; it was therefore supposed and believed, that his Lordship intended to bring the subject before the House of Lords. And, probably, that was his original intention. But when the House met (on the eleventh of December) his Lordship only said, that he had left a paper containing the opinion of the Court of King's-Bench with the clerk; and that their Lordships might read it, and take copies of it. [The paper, and Lord Camden's answer, are printed in all the Parliamentary Debates.]

It is scarcely possible to conceive any thing more ridiculous than this was. He certainly must have changed his intention, for no person will credit that he had the House summoned for the paltry purpose of telling their Lordships he had left
left

left a paper with the clerk. Lord Camden asked him, if he meant to have his paper entered upon the Journals? "No! No!" said Lord Mansfield, only to leave it with the clerk." *

Next day, Lord Camden attacked Lord Mansfield pretty sharply on the subject of his paper, and put several questions to him concerning the sense of it. Lord Mansfield said it was taking him by surprise, and that he would not answer interrogatories. Lord Camden desired that a day might be fixed for his Lordship to give his answers; but Lord Mansfield would not consent.

As far as this attack upon Lord Mansfield went, it was perfectly judicious; and it would have been imprudent to have pushed the matter further; because an attempt of that sort might, and most probably would, have brought the subject into general debate; and thereby have been the cause of establishing Lord Mansfield's doctrine irreversibly, and cloathing it with
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all the solemn graces and sanctions which a certain well known crafty influence can easily procure.

The next attack that Lord Mansfield made on the rights of juries, was not less interesting, but it was open and avowed. The judges of his own court supported his design without, perhaps, perceiving the nature and extent of it; at least it may be candid to admit the possible supposition, for Lord Mansfield's art was usually the best of art; it was the art to conceal itself: but this attempt was attended with an advantage to the public that Lord Mansfield did not foresee. It brought forth the strong admired talents, and great legal abilities of Mr. Dunning, afterwards Lord Ashburton.

It has been already mentioned, under the head of the Duke of Grafton, that Lord Mansfield was exceedingly hurt by a tract of great celebrity, entitled "A Letter on Libels and Warrants, &c." He therein saw his doctrines of law, and his conduct

as a judge, treated in a manner that was no way favourable to his views. But, although he was ardent to punish the printer, he did not choose to trust a jury with the cause. He therefore contrived a new mode, or rather revived a very obsolete one from the star-chamber. This was to connect the matter of libel with the private conduct of the judge, and then to maintain, that a statement of the private conduct of a judge at chambers, or at his own house, was a contempt of the court. It would not be very difficult, to an artful bad man, to construe most libels into a contempt of court.

Mr. Dunning saw the extent of the manœuvre. The case was this. Lord Mansfield had altered the record in the case of Mr. Wilkes at his own private house. Amongst the many parts of Lord Mansfield's conduct which were censured in the Letter on Libels and Warrants, was this fact, of his altering the record. The writer's statement of this fact, Lord Mansfield called a contempt of the court. The pro-

process upon a contempt, which is always some clear indisputable fact, and generally against the officers of the court, attornies or evidence, is by issuing a writ of attachment, and the defendant answering upon oath such interrogatories as shall be put to him. If he purges himself (as it is called) of the charge, he is acquitted; if not, the court inflict such punishment as they think proper. There is no other trial, nor any jury called in.

Whether what Lord Mansfield had done was right or wrong, could not by this process become a matter of enquiry, nor even of animadversion. If Lord Mansfield had proceeded in any of the usual ways against libels, by action, information, or indictment, there would have been latitude for the display of the ingenuity and ability of counsel. He took this for the more prudent and certain way. But his attempt was opposed with a degree of intrepidity and firmness he did not expect.

Upon the rule for shewing cause why the writ of attachment should not issue, Mr. Dunning burst out with astonishing splendour, which gave rise to the report that he was the author of the tract. By many people the tract was supposed to be written by Lord Camden. It certainly contained the whole of his Lordship's doctrine concerning libels. There was a third gentleman concerned.

The defendant's counsel (Serjeant Glynn and Mr. Dunning) exerted themselves with great energy and force of reasoning against this mode of proceeding. They acknowledged that the process by attachment, was, in certain cases, and upon particular occasions, perfectly legal; but they earnestly contended that the matter before the court was not one of those cases. They cited precedents to prove that a chief justice, of the most indisputable abilities, had declined the use of this mode of proceeding. This was the great Lord Coke. They observed, that the cause now depending is the most important, and the most essentially interesting

ing to the liberty of the subject, of any that ever had been brought before that judicature. That the method of trial by a jury is the inherent, the native, the peculiar privilege and glory of Englishmen; that this mode of process was originally founded on the best and the most solid principles, and that the wisdom of it had been approved by a long succession of ages; that whenever it should be deemed expedient to alter it, and to adopt any other mode of proceeding, the legislature, as it is the most proper judge of this expediency, so it would be the only proper authority to enforce the subject's obedience. They contended that the pamphlet did not at all suit the party alluded to. That it appeared from the affidavits on behalf of the prosecution, that the facts were not as stated in the pamphlet; and if so, there was an end of the cause for the particular mode of proceeding contended for. That it was impossible the character drawn in the pamphlet should be the portrait of an original, it deviated so far from the likeness of any chief justice, particularly the present one of the court of King's-

bench. That it was only in answer, by way of argument, to another pamphlet, that had advanced doctrines not agreeable to the notions of the author of *The Letter on Libels*. They likewise urged, that supposing a pamphlet to be a reflection upon the party alluded to, yet that an *attachment* was an improper mode of proceeding in this case; for that if the chief justice of the court was alluded to, he had several methods to do himself justice, without taking this *unconstitutional one*; he was a member of a most illustrious body, who would never suffer the slightest reflection on the character of any of their members to pass unnoticed or uncensured; that as a peer of the realm, he was entitled to his action of *scandalum magnatum*, wherein he need not fear but that a jury would give him a proper satisfaction for any injury he should *prove* to them he had received.

That an attachment (the process of contempt) was originally instituted for the benefit of the subject; it was established to enforce obedience to the commands of

courts of justice; it was founded in necessity, for, if the courts of justice were not possessed of such a power, their proceedings would be vague and nugatory; and therefore, as the case before them, was not attended with any of the peculiar circumstances necessary to support an application of this sort, it would be too much for the court to extend it beyond its original limits.

That a contempt must be a positive fact; must be an act done and committed. A *constructive* contempt was a thing never heard of: it would be such a comprehensive encrease of power, that no person would be safe one moment wherever it was permitted.

That even the practice of granting informations, which went a great way, would be nothing if the present motion were granted.

The method to apply for an information is this, the party, who conceives himself
R 4 injured,

injured, annexes the paper, in which he thinks himself alluded to, to his own affidavit, wherein he swears that he believes the writer, printer, or publisher, (as the case may happen to be) intended to reflect on him; whereupon the court grants the information, but the defendant is always tried, and the fact proved to the satisfaction of a jury; but in this case, if the attachment goes, the court exercise the *distinct* and *peculiar* provinces, of *party, judge, evidence, and jury*.

They observed, that it was no contempt to disobey the order of a judge at *nisi prius*, at the Old Bailey, or at chambers, till made rules of court; which was generally done of course, from the respect the court paid to the persons who made such orders; however, as the order in question never was made a rule of court, it was no contempt.

They instanced the late Lord Ferrers's case, in which an *habeas corpus* had issued in the vacation to bring his countess before a judge,

a judge, which the earl not doing, a motion was made the ensuing term for an attachment, for a contempt in not obeying the writ; but the court was of opinion it was no contempt of court, the writ not having issued by virtue of a rule of the court, and the motion was denied, and a rule granted for another *habeas corpus*.

• Another case they instanced was, a motion for an attachment against the publisher of *The Moderator*, in which lord chief justice Pratt's determination, for discharging Mr. Wilkes from his commitment, was called *precipitate* and *inconfiderate*, *injudicious* and *erroneous*; yet the rule was never made absolute.

The Attorney General, (Sir Fletcher Norton) after expatiating very largely upon the heinousness of the offence, took occasion to say, that if the defendant had, at the time that the motion for the rule was made, (which was in January, 1765,) stopped the circulation of the book, and had come personally before the court, and made some kind

error had escaped the observation of all the counsel.]

However, next day, to their astonishment, the fact appeared. For about two o'clock, just as the court of king's-bench was supposed to be rising (the court of common pleas was up) Lord Mansfield suddenly left the bench, and Sir J. E. Wilmot instantly called for the defendant's counsel. Mr. Dunning happened to be in the court, and a messenger was sent for Mr. Serjeant Glynn, who having left the court of common pleas, was overtaken at the hall gate, just as he was stepping into his carriage. When the serjeant came into the court, Mr. justice Wilmot said, he had a matter to propose to them, in the affair of the attachment, to which he should desire their concurrence; viz. in the rule granted last January, there was found to be a material mistake, it was called *the King against John Wilkes*, instead of *the King against the Defendant*. His desire was, that the defendant's counsel would give their consent to amend the error by

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striking

striking out Mr. Wilkes's name, and inserting the defendant's.

Mr. Dunning said, that if it meant to extend the charge of *contempt* to other parts of the pamphlet, the defendant would be adjudged unheard; for all the arguments of his counsel had been confined to the paragraph which had been supposed to allude to the alteration of the information in the particular case of Mr. Wilkes; which transaction not being an act of the court, but of a single judge at his own house, or chambers, was not, as he and the learned serjeant had contended, and did still contend, nor could not by any fair and liberal construction, be called *a contempt of the court*. Now if it is intended, said he, to *shift* the ground of accusation, it must be by a fresh rule, and fresh affidavits.

Mr. Serjeant Glynn said, the proposal had surprized him a good deal. He was totally unprepared. It was not the practice of the court to make such applications. He could not consent to it.

Mr.

Mr. Justice Yates said, the error had come to his knowledge only a day or two ago ; that there was other matter in the pamphlet, which was of the highest consequence to the court ; and though it was not the practice of the court to make such alterations, yet, in this very extraordinary case, he thought the desired alteration both perfectly right and necessary.

Sir Richard Afton admitted, that it was not the practice ; but this was a very particular case, in which the honour of the court was deeply concerned.

Sir J. E. Wilmot very earnestly and warmly solicited Mr. Serjeant Glynn and Mr. Dunning, to give their consent to the proposed alteration. He made use of a variety of arguments, such as accelerating the course of justice ; the disreputable idea of a suspicion to the contrary, &c.

At length Mr. Serjeant Glynn moved to discharge the rule. The court refused to agree to the motion. The Attorney-general said he would consent to the motion to discharge

charge the rule, if the learned serjeant would add to his motion, that it was in consequence of the mistake.

Mr. Dunning said, he would not agree to that, because it left, by strong implication, ground for a fresh rule.

Notwithstanding every thing was urged from the bench, that great abilities could suggest, and enforce, still Mr. Serjeant Glynn and Mr. Dunning continued firm in their refusal.

At length the judge (Wilmot) asked Mr. Serjeant Glynn, *as a gentleman*, to give his consent. The judge and the serjeant lived upon terms of intimacy, and this request being made to him, as from one gentleman to another, piqued the serjeant a good deal, who, with some warmth, replied, That as *a man of honour* he could not consent; for that his client had been with him the day before, had told him of the error, and the intention of the proposed amendment, which at that time he did not give credit to; and had instructed

fructed him particularly not to consent to the amendment, if it was proposed. This altercation, which had lasted above two hours, now ceased; and another application was made from the bench. This was a request, that they would move for a rule to shew cause, why the present rule should not be discharged? Mr. Dunning, who had also been a good deal irritated, sharply said, 'What! a rule upon a rule! It is contrary to all practice. This request was also refused.'

Next day, Mr. Philip Carteret Webb, solicitor of the treasury, prepared a fresh accusation, from a considerable quantity of fresh matter, extracted from the pamphlet, with fresh affidavits of the publication, &c. all which were read in court; and a motion made for a new rule, against the defendant, to shew cause why a writ of attachment should not issue against him for his contempt.

The rule was granted. But the defendant being gone into the country (apprehending the

the business to be finished) the officers could not make a personal service of the rule; and complaint of this circumstance being made to the court, the following *third* rule was issued.

Saturday next, after fifteen days from the day of the Holy Trinity, in the fifth year of King George the Third.

ENGLAND.—Upon reading the several affidavits of John Topham and another, and a rule of this court thereto annexed; and of Robert Mason, and a duplicate of the same rule thereto annexed, it is ordered that Tuesday next be given to the defendant, to shew cause why a writ of attachment should not issue against him for his contempt. And it is further ordered, *that leaving a copy of this rule with, and shewing the original to any of the family of the said defendant, at the dwelling house of him the said defendant, shall be deemed good service of this rule.*

On the motion of Mr. Wallace,

By the Court.

On the day appointed by the last rule for shewing cause, Mr. Dunning stated to the court, the shortness of time that had been allowed the defendant to make a defence to the great length of fresh matter, which had been selected; and asserted, that it was impossible to consider of a proper defence, in a case of such importance, which had engaged the attention of persons of all ranks, without longer time. And, after very forcibly representing the harshness, and seeming persecution in the case, moved to enlarge the time for shewing cause, until the next term. The motion was granted.

Next month (July 1765) the ministry were changed. And a total revolution in politics took place. Mr. Yorke, who had been appointed Attorney-general, was desirous of *continuing* this prosecution; but the Marquis of Rockingham, who was then Minister, interposed, and prevented any farther proceedings.

In the month of November, 1768, a woman

man having appeared before two of his Majesty's justices of peace, to swear a child against the secretary to Count Bruhl, the Saxon Minister; the Count interfered, and the justices were afraid to proceed. The woman applied to Sir Fletcher Norton, who advised that a motion should be made in the court of King's-bench for a peremptory mandamus to the justices to proceed in that *filiation*. The motion was accordingly made by Mr. Mansfield.

The Lord Chief Justice Mansfield received it with marks of anger and surprise; he said he did not understand what was meant by such collusive motions, unless it was to draw from that court an opinion upon the privileges of foreign ministers, which they had no right to meddle with; that the motion was absolutely improper; that he wondered who advised it, and that he certainly should not grant the mandamus.

Sir Fletcher Norton then got up, and said, that the party was his client; that his Majesty's subjects, when injured, had a

right to redress somewhere or other ; and that he knew of no place where such redress could be legally applied for or obtained, but in the court of King's-bench ; that therefore *he* had advised the motion.

Lord Mansfield, upon this, began to flourish, in his usual stile, upon the sacred privileges of ambassadors, the law of nations, &c. &c. repeated something about collusive motions, and took notice that the application for redress ought regularly to have been made to Count Bruhl, or to his Majesty's Attorney-general.

Mr. Justice Aston said, deliberately, that he agreed entirely with the Lord Chief Justice, and that the motion *ought not* to be granted.

Sir Fletcher Norton then said, that, after he had declared *himself* the adviser of the motion, he did not expect to have heard it again called *collusive* ; that he despised and abhorred all ideas of *collusion* as much as any man in that court ; that it was the first
2 time,

time, and he hoped it would be the last, that he should hear the court of King's-bench refer an injured subject of England to a *Foreign Minister*, or to an *Attorney-general* for redress; that the laws of this country had not left his Majesty's subjects, complaining of injury, without a legal and certain protection; that their claim was a claim of *right*, upon which the court of King's-bench had full authority to inquire, and *must* determine; that if his clients were injured, he should always bring them to that court for redress, let who would have committed the injury, and he would take care that that court *should* do them justice; that his motion was proper, and *should not* be withdrawn,

Judge Yates then said, that the reasons offered by Sir Fletcher Norton had clearly convinced him, that he had not the least doubt of the authority of the court to protect his Majesty's subjects; and that, for his part, he should never refer them either to a Foreign Minister, or to an officer of the crown; that he thought the motion per-

fectly regular, and that it ought to be granted.

Judge Aston then began to recant. He said, that he was always glad to be convinced of a mistake, and happy in having an early opportunity of acknowledging it; that from what his brother Yates and Sir Fletcher Norton had said, he saw clearly that his first opinion had been erroneous, and that he agreed the motion ought to be granted.

Lord Mansfield then, in great confusion, said, *that he should take time to consider of it.* To this Sir Fletcher Norton replied, that, as two of the three judges were of the same opinion, the motion *must* be granted; but that, for his part, if his Lordship wanted any time to consider, whether, when a subject applied to the court of King's-bench for redress, he was or was not to be referred to a *Foreign Minister*, or to an *Attorney-general*, he had no objection to allowing him all the time he wanted.

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Thus wickedness and folly were defeated, and the unhappy Foreign Minister, in spite of the law of *nations*, was obliged to comply with the law of *nature*, and to provide for his child.

The following Affidavits, filed in Michaelmas Term, 1769, are taken from the Office Copies.

IN THE KING'S BENCH.

August Henry, Duke of Grafton, maketh oath, "That on or about the 10th day of June last, he received, inclosed in a cover, or covers, directed to this deponent, the three several papers or writings hereunto annexed, severally marked with the letters A, B, and C, respectively. The said paper marked A, purporting to be a letter, dated Mincing-lane, 10th June, 1769, from Samuel Vaughan, to this deponent; the said other paper marked with the letter B, purporting to be an affidavit made by Samuel Vaughan, of London, merchant, on the 23d of March, 1769, before Samuel Turner, Esq; then Lord Mayor of the city of London; and the said paper writing marked

with the letter C, purporting to be a case relating to the clerk of the court's office in the island of Jamaica. And which said three several papers so inclosed in the said cover, or covers, and directed to this deponent as aforesaid, were, as this deponent has been informed and believes, on or about the said 10th day of June, brought to this deponent's house in Arlington-street, in the parish of St. James's, within the liberty of Westminster, in the county of Middlesex, by some person unknown to this deponent, and left with this deponent's porter, or some of his servants there. And this deponent saith, that the said cover, or covers, in which the said three other papers were inclosed, are lost or mislaid, so as that this deponent cannot find the same, nor does he know where the same are. And this deponent further saith, that he is informed, and believes, that the said paper writing marked with the letter (A) and the name Samuel Vaughan subscribed thereto, and the address or direction to this deponent set at the foot thereof, is all of the hand writing of Samuel Vaughan, of Mincing-lane, London,

don, merchant. And this deponent further faith, that he is informed and believes, that the said paper or writing, marked with the letter B, purporting to be an affidavit, as aforesaid; and likewise the N. B. or words wrote underneath the same, are all of the hand writing of the said Samuel Vaughan, of Mincing-lane, London, merchant, except the name or words [Samuel Turner, Mayor] set or subscribed to the jurat of the said affidavit, which this deponent is informed and believes, are of the hand writing of the said Samuel Turner, then Lord Mayor of the city of London. And this deponent faith, he is informed and believes, that the words indorsed on the said paper or writing marked (C,) that is to say [Case to be perused at leisure] are of the proper hand writing of the said Samuel Vaughan, of Mincing-lane, London, merchant; but the body of the said paper or writing marked (C,) is of the hand writing of some other person, as this deponent believes, who is unknown to this deponent. And this deponent further faith, that at the time this deponent received the
said

saïd several paper writings hereunto annexed, as aforesaid, and before, he, this deponent, was, and still is, one of his Majesty's most honourable privy council, and also the first commissioner named in, and appointed by his Majesty's commission under the great seal of Great Britain, for executing the office of Treasurer of his Majesty's Exchequer. And this deponent further saith, that by the words [Clerk of the court's office in the island of Jamaica] mentioned and contained in the saïd paper marked with the letter (B,) and also by the words [To clerk of the supreme court in the island of Jamaica] wrote at the foot of the same paper, was, and is meant and intended, The office of chief clerk to attend the supreme court residing in the town of St. Jago de la Vega, otherwise Vaga, within his Majesty's island of Jamaica, in America, as this deponent apprehends and verily believes; and which office, as this deponent is informed and believes, is, and hath been, granted by the crown, by letters patent under the seal of Great Britain; and is an office of a public nature and trust, an

of considerable profit, and concerns the administration and execution of justice in the said island of Jamaica. And this deponent further saith, that he verily believes the said letter and affidavit, were written and sent to this deponent by the said Samuel Vaughan, with a view to tempt and corrupt this deponent for a gift or reward of five thousand pounds, to procure his Majesty to grant the aforesaid office in the manner mentioned in the aforesaid affidavit. And this deponent further saith, that he hath been informed by Mr. Henry Newcome, of Hackney, in the county of Middlesex, that the said Samuel Vaughan had applied to him, to convey a proposal to the effect contained in the said affidavit, to this deponent; which the said Mr. Newcome had refused to do; and which information this deponent believes to be true. And this deponent saith, he hath lately caused an application to be made to the said Henry Newcome, to make an affidavit of what he knew relative to the above matter, who returned for answer, that he had rather appear in court, and give an account, *viva voce*, of what he knows relative

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268 LATE EARL OF MANSFIELD,

tive to the affair, than give an affidavit, or to that effect, as this deponent has been credibly informed, and verily believes."

GRAFTON.

Sworn this 16th day of Nov. 1769,
at my house in Lincoln's-inn-
fields, before me, E. WILLES.

LETTER A.

My Lord Duke,

Mr. Henry Newcome's strict honour, as well as his very sincere regard for your Grace, rendered him (in my opinion) the properest person to entrust with a proposition that required the utmost secrecy; but his delicacy preventing, I am (by the nature of it) precluded from every other method, but by immediate application to your Grace; in which I am confirmed by Mr. Howell's applying again yesterday to purchase a resignation of the patentee, who is my friend.

The inclosed affidavit will shew the proposal, which will be increased, if necessary;
and,

and, would your Grace indulge me by perusing the case, I trust it would appear, that *I have a pretension in preference to any other.*

I will take an opportunity of waiting upon your Grace, hoping the honour of a conference, otherwise, to receive back the affidavit, in order to destroy the fame.

I am,

your Grace's most obedient,
and most humble servant,

SAM^L. VAUGHAN.

Mincing-lane, 10th June, 1769.

His Grace the Duke of Grafton.

AFFIDAVIT B.

London, ff.

“ This day appeared before me, Samuel Vaughan, of London, merchant, and made oath upon the Holy Evangelists, that he, being informed that Mr. ——— Howell had said, that he either expected, or was promised the reversion of the clerk of the court's office, in the island of Jamaica; and as he (this deponent) apprehends that he
has

has some degree of merit in what he has already done to promote *public security* of property, by the regular recording judgments, &c. and in properly *conducting* the said office; and that, as his own interest renders necessary the continuing the same regularity; therefore he, this deponent, doth hereby voluntarily promise and engage, that in case the reversion of the said office shall be made and procured for the natural lives of his three sons, Benjamin, William, and John Vaughan, of Mincing-lane, or for the lives of three other persons to be nominated by him, (which ever shall be proposed,) upon the same conditions as are mentioned in the last patent for that office; that then he, (this deponent) will, upon the said patent being delivered to him, pay into the hands of Mr. Henry Newcome, or to his order, five thousand pounds, lawful money of Great Britain, to be paid to the person or persons who procures the said patent; or, if required, lodge security in the hands of the said Mr. Henry Newcome, for the payment of the said sum of five thousand pounds sterling, so soon as the said

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patent is made out, and delivered to him, this deponent. And this deponent further saith, that he never hath, directly or indirectly, mentioned or given the least intimation of his intention, design, or proposition touching this matter, to any person or persons, except to the said Mr. Henry Newcome. And this deponent further saith, that whether this proposition should be approved, accepted, and be efficacious, or otherwise rejected, that in either case he (this deponent) will never at any time or times divulge, mention, or give intimation, offer, proposition, or agreement relative to this matter, to any person or persons whatsoever, except the said Mr. Henry Newcome; and further this deponent saith not."

SAM^L. VAUGHAN.

Sworn at the Mansion-house

in London, this 23d March,

1769, before me, SAM^L. TURNER, Mayor.

N. B. Mr. Abraham Farley has two patents, viz. for clerk of the crown and clerk of the peace in the island of Jamaica: for
4 clerk

clerk of the supreme court in the island of Jamaica. And it is the last that Mr. Vaughan is particularly desirous to obtain.

Upon the first day of Michaelmas term, in the year 1769, the Duke of Grafton, by his counsel, the Solicitor-general, (Lord Thurlow) moved the court of King's-bench for a rule against Mr. Vaughan, to shew cause why an information should not be filed against him for sending the letter to the Duke of Grafton marked A; and the affidavit made before the Lord Mayor marked B, in the preceding papers.

On the 27th of November, the argument on this rule came on, when Mr. Wedderburn, now Lord Loughborough, who was counsel for Mr. Vaughan, exerted himself with great force and energy.

After hearing the counsel on both sides, Lord Mansfield delivered himself as follows :

“ What the Solicitor-general concluded with,

with, is decisive upon the present occasion, on account of the repeated declarations by the counsel for the defendant, that a practice of the kind complained of here, is certainly dishonourable and scandalous; and, because it appears, that declaration of theirs, is warranted by the opinion the defendant himself had of the transaction, which, most manifestly, he thought at the time, to be a transaction which could not bear the light; for in his letter he writes in this manner upon it: "A proposition that requires the utmost secrecy." Secrecy!—Why, if the office is to go to the highest bidder, and Mr. Howell was offering, and that occasioned a second higher offer to be proposed, why secrecy? Mr. Henry Newcome, he says, has a delicacy—what his delicacy was, appears upon the affidavit; that Mr. Newcome thought, after reflecting upon it, the transaction to be such, he would not meddle with it. The extraordinary manner of the security for the payment of the money, not by a bond, not by agreement, not by a note, (because they would have been certainly void in law, for

in a criminal transaction, every bond and agreement made to secure it, would be void in law) but by an affidavit made before the Lord Mayor, swearing to pay the money, and in that affidavit, an assurance, that it had never been divulged but to Mr. Newcome, nor ever should be to man, woman, nor child in the world. This appears to be the sense of the defendant's counsel, and of the defendant himself. It has been insinuated by the counsel, that transactions of this kind for money are frequent, *i. e.* that in the city of London, they are believed to be frequent. And the defence made by the affidavit is, that he verily believed the office would be accounted for, and was saleable, and if it was not sold to him, it would be sold to Mr. Howell; therefore, he went upon a presumption, that it was saleable. The nature of the thing, without authority from Hawkins, shews why these things were urged by the defendant's counsel; for, if a man sells lawfully what he has a right to sell, there is nothing scandalous or dishonourable; but, if a man, standing under the relation of an officer under

under the King, or of a person in whom the King puts confidence, or of a Minister, if he takes money for the use of that confidence the King puts in him, he basely betrays the King, he basely betrays his trust—it may then be called scandalous and dishonourable (if those epithets are to be chosen, instead of the epithet, criminal.) The mischief also that may arise to the public in buying the grant from the crown (which the wisdom of the constitution intrusts the King in disposing of, on account of the business to be executed by them.) If honours, if bishopricks, if preferments, if pardons, if every thing is to be put up to sale, see the terrible consequence that will result there-from to the public. If the case is so circumstanced, for this court, upon that ground, to refuse the information, which does effectually bar every indictment; (for no grand jury would grant an indictment after this court had, upon point of law, debarred an information) that it is no crime in law to commit such a fact;—it would be highly improper for this court to do it in a summary way, which would

be liable to no review, if the matter was ever so doubtful. Unless, therefore, I was clearer than the light of the sun at noon-day, that it had been settled and established, that so mischievous a practice should not be punishable by the laws in being, I should agree for making this rule absolute. The defendant may demur to it, or move an arrest of judgment after trial; and, if he is not satisfied by this court, he may have the opinion of the High Judicature, assisted by all the judges of England. And, when the question comes to be solemnly adjudged, it will be for their consideration, if they should think there should be no law in being to guard against the mischievous consequences. I own, at present, I am not satisfied with any of the arguments that have been used to raise a doubt, whether this is, in the language of the law, a misdemeanor, and punishable as such. I think, the natural genius of a man's own mind, judges better of it, than all the labour and ingenuity that has been used, to make it not criminal;—when I say criminal, I mean criminal as a misdemeanor. I will say little

tle upon that, because, whatever opinion I may be of now, it is without prejudice. I will hear the argument upon a demurrer, if there is one, or upon an arrest of judgment, if there is one, just as open as if nothing had passed. Therefore, I shall purposely avoid saying any thing on the argument, with a view of prejudicing, as little as possible, any future argument, if that is thought fit upon the occasion. In the first place, as to the statute of Richard the Second, and Edward the Sixth, I do agree with the Solicitor-general, the question does not turn upon them, whether they do or do not extend to Jamaica; but the argument made use of, does not at all go to the question, whether they do not extend to this case; for this office is granted by letters patent, under the great seal of England: all letters patent that are granted by the King, under the great seal, are governed by the law of England. The colonies themselves have their own particular laws, and the argument is very colourable, which Mr. Wedderburn mentioned, if it is in the report.—To be sure, no act of parliament

made in England, binds Ireland, or a colony, actually settled, without naming them; but it is held, all the laws of England, both common and statute, go to a colony new settled, which were in being at the time of settlement, with this restriction :— Provided that they be laws suited to their situation and condition; and therefore, with that restriction, to be sure, a hundreth part of the statutes of England don't go to the colonies: but they do go, if they are apposite, and adapted to their situation and condition, for, as they carry the statute law, so they carry the common laws, that are applicable. The situation of Jamaica differs indeed, because, being a conquered country, it retains its own laws, till the conqueror alters them, and they are retained in so far as they are not altered; and, unless they are totally altered, they retain their own laws; therefore, the argument is very strong, as to the nature of Jamaica, that those positive laws shall not extend to them; and, I know, in experience, a great many acts have been adjudged not to extend to Jamaica; as for instance, the statute
of

of frauds, and several others, (though it was conquered in Cromwell's time) that and several others were made before the usurpation. It is quite a different consideration; and you will find that in the case of the Isle of Man, I think it is in the second or third institute; you will find it there—the chief justice, I think, or two or three of the judges attending with counsel, they might descend according to the laws of England, the letters patent being the law of England, they being entitled to dower under the law of England, and in that case they held, that the estate was to descend to the daughter of

therefore, if that was necessary, it would not reach to the case of letters patent under the great seal, must be governed by the grand law of England, be they for commissions abroad, or whatever they may be. But, it does not seem to me, that this matter turns upon the statute of Richard the Second, or Edward the Sixth, but upon the common law. The first great consideration is, whether a privy-counsellor, and an officer at the head of

the King's treasury, and in confidence with the King, selling that office, *i. e.* selling his interest with the King, for the grant of that office;—whether this is a misdemeanor or not at common law? For you must take the fact, which there is no controversy about.—See what the fact is. This is an office in the gift of the King alone by letters patent; it is not in the gift of any subject whatever;—there is no right of office to recommend whatever; but it is the King's own grant,—and it is the King's grant which must pass *ex gratia speciali mera modi ex gratia scientii*. And if the King sold it by his letters patent, it would be acting contrary to the trust the constitution hath reposed in him, for the disposal of those offices.—The constitution don't intend the crown should sell those offices, to raise a revenue out of those offices. This being the nature of those offices, what is the application? The Duke of Grafton has sworn thus—he has sworn that this offer was made him, with a view to tempt and corrupt him, for a gift or reward of 5000*l.* to procure his Majesty to grant the aforesaid office
in

in the manner mentioned : that, the Duke has sworn, Mr. Vaughan does not deny it, therefore, it is admitted, this was the view to procure this office from his Majesty—not barely to give it himself, but to procure the office. Is it possible to hesitate, whether this would not be criminal in the Duke of Grafton,—contrary to his duty as a privy-counsellor,—contrary to his duty as a Minister,—contrary to his duty as a subject? If a man in no office has interest with the King, and comes to recommend a person to him, under the influence of a bribe, it is different what the person, who desires, to be patentee, does. I have looked into no case upon it, but from my memory, I do think, if you look back to the impeachments of the House of Commons for two hundred years, of Ministers, that, true or false, (very often there are false charges, and sometimes true—) there hardly ever is an impeachment against a Minister, where the charge is not for receiving money for procuring a grant from the King. I am satisfied it was so with the Duke of Buckingham; and

and I am satisfied it was so with the Lord Clarendon, though he was a very honest man.

Mr. Wedderburn. That was upon the ground of monopoly.

Lord Mansfield. It is the sum of money makes a charge. If it is criminal in ministers or privy-counsellors to do this, I take it to be a very necessary consequence, that, wherever it is a crime to take money, it is a crime to give it; because the corruption is reciprocal. It is corrupt in the receiver, it is corrupt in the tempter and giver. I take it in all circumstances to be reciprocal,—where the receiver is guilty, the giver is also. But it is said, this is not the giver, it was refused—That attempts to the crime are not the crime, is certainly true, where there is an attempt to commit a crime, which of itself is not the crime. But there are many cases where the attempt is the crime; and, in all cases of corruption by bribery, the attempt is complete with regard to the offerer. His crime has had its full completion, whether the other refuses it, or takes it, does what

he was bribed to do or not;—from the nature of the thing it is so.—There are many cases. Mr. Lee, very fairly, though it was against him, looked into the authority of Lord Coke—He says, if you offer a bribe to a judge,—no matter whether he take it or not; though he refuses it, the bribe is complete with him that offers it: as in the cases that have been mentioned of bribery at common law, of money at an election for a man to take a bribe for his vote. If it respects a place of public trust, the constitution intends it shall be free—How does that hold with the advice given by a Minister to the King? Upon the same principles;—his advice should be free according to his judgment. It is the duty of his office—he has sworn to it; therefore, in those cases Mr. Wallace alluded to (I remember the two last) it was taken for granted, that an offer to bribe at election of Members of Parliament, or of a magistrate at a borough, though the person did not vote, yet against the offerer the crime was complete. So it was in the case of Lee against Plimpton.

Mr.

Mr. Lee was candid enough to cite this, though against him. I am very far from being satisfied that these arguments raise a doubt, that this is not a misdemeanor. If it was a doubtful matter, I should be of opinion to have it determined in that way, where it could not be concluded by the opinion of this court, but might go farther.

Mr. Justice Yates. The counsel for the defendant have very ingeniously, and with great ability, endeavoured to lead off the attention of the court from trying the question, to that which is not the question. With this view they have learnedly debated, whether the statute of Edward the Sixth extends to Jamaica; whether a sale of office is an offence at common law, or not?—When, after all, this has not the least semblance of a sale of office, nay, the defendant don't assume the character of a purchaser; for, by his own affidavit and offer, it is for such persons as shall have procured the reversion for him. Now, in all purchases, the contracting parties must be deemed to have a power to fulfil the contract. That, in
this

this case, supposes the office saleable; that it should be an office within the power of the Duke of Grafton himself to grant,—the defendant does not look upon it in that light; but there is a sum of money offered for the procuring this office, which the defendant tells us, is in the gift of the Crown. Another thing too,—when fair purchases are made, they don't come cloaked up in an affidavit of secrecy, but a frank, open, and ingenuous offer, if the heart means honestly. In this case there is an affidavit of the utmost secrecy,—the letter says, that the proposal requires the utmost secrecy; and, to answer the explanation given of this affidavit of secrecy, it is said, that the defendant might be considered in the light of an indifferent person.—I see, in this letter, he desires, that if the offer be not received, that he may then have the affidavit back, in order to destroy it;—when, if all his apprehension was, lest the Duke should suspect he meant to entrap him, if the offer was rejected; where was that trap that should make it necessary, after the affair was over,

to

to destroy the affidavit? This is the true question; and I am sorry that ever such a question should be made a question—Whether a bribery to obtain an office, shall be an offence or no?—It is stated by the defendant himself, to be an office of great trust and profit. The method used to obtain it, is to influence a privy-counsellor to induce, or to warp the judgment of the King to give an office of so much consequence, merely from the motive offered in this case to the Duke,—the motive of a reward to procure his interest.—But, however, as this matter will still be open for the defendant to debate hereafter, I shall think it wrong to go into the question too much now. The light the Solicitor-general put it in at last, is right; and even if it was but questionable, it would be right to go into it; it would be wrong for us to anticipate the final decision of that question, which he will be afterwards at liberty to make by demurrer. I shall refrain myself from making further observations now; but it is certainly a matter fit for an enquiry,
and

and the defendant and prosecutor will have time to consider the matter more fully.

Mr. Justice Aylmer. I am of the same opinion.

Mr. Justice Willes. I am also of the same opinion.

The rule was made absolute; which the Duke considered a sufficient vindication of his character. Persecution was not his desire. His Grace thought Mr. Vaughan was more a fool than a rogue. And here the matter ended.

On the second day of February, 1773, there appeared in the London Evening Post, a letter under the signature of Alfred, charging Lord Sandwich, who at that time was First Lord of the Admiralty, with having exposed to sale the office of a commissioner of the navy, for the sum of two thousand pounds, and employing Mr. Corte, agent, to negotiate the affair. Lord Sandwich brought an action against the printer for this *scandalum magnatum*.

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The printer, in his plea, put himself upon his country to prove the *truth* of the charge.

From this conduct of the printer, the cause became a matter of great expectation; for although it is generally believed, that places under government have frequently been sold, yet it is very difficult to ascertain the fact. But this offer, to prove the *truth* of a charge of this importance against a peer, in the highest criminal court of justice, was a resolution that no man then living had ever witnessed.

If the jury found for the defendant (whose name was Miller) the verdict was a record of Lord Sandwich's guilt, and he must have been impeached upon it. On the contrary, if the jury found for the plaintiff, the ruin of the defendant was the certain consequence. The public attention was very much excited by it.

On the eighth day of July, 1773, the trial
came

came on before Lord Mansfield, and a special jury.

The accounts which were given of the trial at the time, were very loose and imperfect.

The following extracts are made from the short-hand writer's notes, and may be depended upon.

After proving the publication of the newspaper in the usual way, by the officers of the stamp revenue (a practice that is not very decent, because the officers of the revenue should not, officially, become informers in any thing that does not belong to the revenue; and it is believed was first introduced by Lord Mansfield) and that Thomas Hanway, Esq. who was a commissioner of the navy office, died in the month of October, 1772; that Charles Marsh, Esq. was removed from the victualling office to fill Mr. Hanway's place at the navy board; and that William Gordon, Esq. was appointed to fill

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Mr.

Mr. Marsh's place in the victualling office.

Mr. Serjeant Adair, at that time, Recorder of the City of London, opened the defendant's case. After a short exordium he said,

"That he had grounds to support him in submitting to the jury that this was not a groundless charge; that it was not conceived in malice without any foundation whatever. The defendant submits it to you [the jury] that there is matter to disclose to you in this place, that justifies him in having published what he has done.

The charge is, *That a messenger was sent to Captain Luttrell, with an offer of a vacant place of commissioner of the navy, in case he would advance 2000l. a vacant place of trust in the naval department; the noble Lord being at the head of that department, is called upon therefore in the public papers, to vindicate himself from an inference that might arise from such a negotiation as he had entered*

tered into, or was supposed to have entered into, upon the subject, which it was only in his power ever to make good; the inference that arose from that, affecting the noble Lord's character, must undoubtedly affect the mind of the writer, and must affect every person till answered. Therefore, this being the charge, the answer to it is, *That there was such a transaction; that a messenger was sent; that that messenger came with this offer, and if he came with the offer, if the person had not the authority to make that offer good, he was deceiving the person to whom he made the offer, but in a more considerable degree abusing the name and character of the noble Lord he was alluding to.* Gentlemen, this is our answer to it; we have justified in this way, that a messenger was sent, the paper goes no further, the paper charges no more than a messenger was sent in the dead of night; what comment that affords you will judge; it is sufficient for me to say, and I am authorized from my instructions to say, that was the truth; a messenger was sent to tender this place upon such terms to Captain

Luttrell;—that Captain Luttrell did, as he ought to do, reject the offer;—the person that made this offer, was a navy agent too. Captain Luttrell's objection was, that he would not obtain that by corruption, which should be the reward of honourable services. If that had not restrained him from entering into the negociation, with whom would any body suppose he was to compleat the negociation?—not with Corte, the agent, who had no authority to sell for himself, nor will any body presume otherwise than that he was the agent for the noble Lord that presided in the navy department, and who *alone* had the *offering* of that place. After this offer was made, this paper appeared; the noble Lord was apprized of it, the report was spread abroad, however long antecedent to the appearance of this paper, and gained general ground; was the conversation of companies in general; and I trust and believe, before this trial is over, you will be convinced the noble Lord knew it; the noble Lord had seen Captain Luttrell; the noble Lord, I trust, will be found never

never to have entered into any expostulation with Captain Luttrell about it; that Corte was the professed agent and negotiator, and did make this offer, the noble Lord had all the reason in the world to think, but no notice was then taken, no notice to this hour is taken of that person. I submit it to you, gentlemen, that when this circumstance appears, *it is a justification*, and justifies all that the author has asserted in this paper.

If the charge goes so high as not only to affect the noble Lord in his private, but in his public character, *what excuse has the noble Lord to make that he has not brought this Corte to punishment,—and that he suffers Corte to go abroad, exercising his functions, without calling him to an explanation?* He has had nothing of an explanation from Captain Luttrell; he has never called for an explanation; if he had, he might have traced it to Corte, the man that so used his name. If a person, without authority, enters upon a corrupt and disgraceful negotiation, and by that means brings slander upon a great name he is no wife authorized to do, he

is a subject of public justice, he deserves punishment; and when the arguments are used for going in the ordinary line of private reparation, it might have been against Corte; *he is the person upon whom the noble Lord should have poured the vengeance due to his injured character*, and not against the printer. Yet the printer only is singled out for the vindication of that character for which this action is brought; and Mr. Corte, who used the name of the noble Lord, (who is the *author* and *inventor* of this calumny, as I now insist upon, and the man who ought to be punished) walks about unnoticed, and exercises a trust even at that board at which the noble Lord presides: he is not brought before you. If upon that kind of conduct opinions prevailed to the prejudice of his character; if the noble Lord brings that criminal before you, he would have it in his power to prove every thing. If he puts it home to the man, to shew he had authority to do it, and he can prove that he had no such authority, the noble Lord would then have an opportunity
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vindicating his character; but he calls upon the printer who has put in the letter; he has not called upon him to produce the author in the usual way, *but against the very function and profession of a printer is this action levelled*; he has not given him those usual means of justification, which men are allowed in that profession, and in a way in which is usual for men who seek for redress of character in the courts of justice; they always demand first who are the authors, before they attack the unwary and unguarded communicators of such kind of reports to the public. They have not done that here, but brought it against the printer, who has not had it in his power, like Corte, to vindicate from such imputation the noble Lord's character. *You do not vindicate it by such an action as this, if you give 20,000*l.* damages against the printer; you do not silence the reports, nor alter the opinions of the public; you do not confute the inferences that arise from a transaction of this sort. I will venture to assert, Corte is punishable for it, if the noble Lord thinks proper to*

do it. It would be unreasonable to a great degree to think there were not well founded inferences against the noble Lord, when he is restrained from doing it by motives not much to his honour. The vindication is open to him. He is fairly open to vindicate. "The charge is false, (it is said) the charge is high; the noble Lord, if it is not totally confuted, if a suspicion lies upon his character, he is unfit and disqualified from every public trust, and loses all the esteem he ever had in the world."

These are the consequences that depend upon this vindication. *I am sorry the noble Lord is so circumstanced, that to do what he will, in this cause, he is not vindicated till he seeks satisfaction against Corte, that has so abused his name, and ventured to transact a negotiation under the colour of such a name and authority as this. Till this is done, do what you will, the imputation must rest upon the noble Lord. If the noble Lord neglects all those means of justification, has he any right to complain that a*
 paper

paper is published, from which inferences arise that may possibly be said to make to his disadvantage, and to the prejudice of his character? It is open to confutation whenever he will. But he neglects the means, and chooses that a jury should so far go out of their way to gratify his request, as to pour ruin upon the head of a printer, *when he himself gives countenance to the imputation, by not bringing before you the person, whom it was in his power to do.* Gentlemen, we shall bring Captain Luttrell before you; then, I presume, the cause rests here;—the paper has made no conclusion. If by construction, any inference arises from it, *it is an inference that must continue, and never will be silent,* so long as the noble Lord acts in the manner he does, *choosing* rather to prosecute a printer, than bring the persons before you who are the *authors* of all the scandal.

Captain Luttrell, sworn.

Mr. Davenport. Please to inform the Court what passed upon an application made

made to you concerning the place of a commissioner of the navy?

Captain Luttrell. It is many months ago. It was a few days previous to the death of Mr. Hanway [which was October 8, 1772.] Mr. Corte came down to my house in Hampshire. He mentioned to me some money concerns, not relative to this matter, and then asked me, if I should like to be a commissioner of the navy? I told him no; I did not think I should. Because, he said, Mr. Hanway was at the point of death; that he could not recover; that his vacancy would be disposed of, and I might have it for two thousand pounds. I told him, I was aware many difficulties might attend such an appointment; that I had understood Mr. M'Kenzie, Mr. Gambier, and many other old officers, were applying for those employments; that I was but a young Captain, and did not choose to run the risk of being abused about it. Mr. Corte then observed to me, that Captain Proby was to remain commissioner of the Dock-yard
at

at Chatham, that the vacancy would be filled up at the navy-board, and that it might be either given to an officer or to a private gentleman. I told him, that, when I considered my particular situation, that was not the line of preferment I wished. He then asked me if I had no friend, whom I thought eligible, that would like the employment. I told him I believed I had, and that I would enquire about it. Here, my Lord, the conversation at that time ended between Mr. Corte and me; he returned to London, and I went to a neighbour, Captain Saxon's. I told him—

Lord Mansfield. Did you ask him about any thing else?

Captain Luttrell. My Lord, there was a conversation afterwards; I was going to tell your Lordship the whole thing with Corte.

[The Attorney-General objects to the conversation being evidence.]

Lord Mansfield. I don't know yet what it is; there may be evidence from conversation, and some that is not evidence.

Captain Luttrell. I mean to tell my own story,

story, to shew your Lordship the story that has been reported did not come from me, if you have no objection. I went to Captain Saxon, and told him the nature of the offer made to me, and asked him how he thought himself disposed for it. He said, though he did not think it eligible for me to take it, it was for him, and he would give the 2000l. and asked if I believed the application would come in time. I said I believed it would. I said the gentleman that came to me came from London that night, and did not stay with me more than half an hour, and was returned to London. I wrote to Corte, to let him know my friend would take it. When I received Corte's answer, I found another person was nominated.

Lord Mansfield. Did you write to Corte?

A. Yes, I wrote to Corte, and told him I had procured a friend who would give the 2000l. I did not mention Captain Saxon's name about it. A few days after, I met accidentally Captain D. I asked him if he had heard of Mr. Hanway's death. He answered, yes, he had heard it;

it; and asked if I knew of the vacancy he had made, *for that he knew the price of a commissioner was 2000l.* Finding the story like to get abroad, I minuted it down; and I believe it is pretty minutely set down. I have, in general terms, acknowledged an offer of the sort made to me; but I never quoted any authority whatever. I had not demanded an explanation of Corte till I saw him afterwards. Corte is a respectable man, and a man of property. . Mr. Corte afterwards said, the Rev. Mr. Parry was the man that made that offer; but he would not talk about that, except to Lord Sandwich privately. He said he believed it would turn out a Huntingdonshire negotiation.

Lord Mansfield. Give me that over again; you spoke it very fast: What was the conversation afterwards with Corte after putting this down in writing?

Captain Luttrell. Mr. Corte has since told me it was not at that time that—

Lord Mansfield. About what time? specify it.

A. My Lord, it was during the last sittings; the day I cannot recollect.

Lord

Lord Mansfield. Since the cause was in the paper?

A. Yes, my Lord, long enough since that. The person who employed him was the Rev. Mr. Parry; and that he was the person who authorized him to make that offer, and that he would avow having done so.

Lord Mansfield. That he, Corte, would avow it?

Captain Luttrell. That Parry would avow having done so; but that he would not tell in what manner the money was to be applied, except to my Lord Sandwich privately, if he desired to hear it.

Lord Mansfield. If he desired to ask?

A. If he desired to hear; that was the expression.

Lord Mansfield. You said something about Huntingdonshire?

Captain Luttrell. I observed to Mr. Corte, I apprehended it would require a fuller explanation from Mr. Parry: He said, then it would turn out a Huntingdonshire negotiation; that the Parson was—or that Mr. Parry—I am not sure whether he said

said Mr. Parry or the Parson—was rather pressing, for that he wrote to him first.

Mr. Attorney-General. [Thurlow.] Mr. Luttrell is now giving evidence subsequent, as I apprehend, to that conversation.

Lord Mansfield. That he has been doing a great while without objection; he has given evidence to be sure of what you might have stopped—but you did not—He is giving evidence of what Corte said to him when the cause was in the paper.

Mr. Attorney-General. I did not mean to object to the conversation which Mr. Luttrell pretended, or said he had with Mr. Corte originally; but I did mean to object to any conversation subsequent to that.

Captain Luttrell. I have sworn to it!

Lord Mansfield. I asked him particularly, and he fixed the time, while the cause was standing in the paper to be tried. You should call Corte and Parry to the transaction.

Captain Luttrell. I was wishing to convince the Attorney-General I have no share in the business.

Mr.

Mr. Attorney-General. I had no objection to what he said at first, which is a very different thing from any subsequent conversation; there is not a syllable of evidence in it:—If I had chose to have objected at first, I might.

Lord Mansfield. Yes, all of it is evidence, such as it is, liable to observation; the application to Corte is evidence; whether it comes up to the fact alleged in the justification is matter of observation, but that is evidence to be sure—What is said after the cause was in the paper, to be sure, is not evidence without farther proofs.—What was said about Parry, they must call Parry to prove.

Mr. Dunning. No part of it is evidence, unless the conversation connects it with Lord Sandwich.

Mr. Davenport. Mr. Luttrell, I observe you treated with Corte as a person you thought could make a proposal to you that was well warranted. What is the nature of Mr. Corte's business?

Captain Luttrell. Mr. Corte is an agent; he has had a great deal of my money in his hands.

hands. At first he never quoted any body as his authority.

Q. Is he a navy agent employed in navy business?

A. I don't know enough to answer that with certainty, that he is an agent for navy business.

Lord Mansfield. Is he an agent for Lord Sandwich?

A. Not that I know of—I never heard that he was—I cannot say positively.

Mr. Attorney-General. Do you know he is not?

Captain Luttrell. So far as I know of, he is not. I can swear so far as the best of my belief, he is not an agent for Lord Sandwich.

Mr. Davenport. Now I ask you, Mr. Luttrell, whether you did not attend at Lord Sandwich's levee long after this matter had transpired and was public?

A. I never did at his levee.

Q. Upon his Lordship?

A. I did.

Q. Did any thing there pass, or did his

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Lordship say any thing about this transaction?

A. He did not say any thing relative to this transaction.

Q. How long after this transaction was it that you waited upon his Lordship?

A. I cannot speak positively as to that; but it was since this transaction happened.

Mr. Attorney-General. After the publication of this libel?

A. Long after the publication of this paper.

Q. How long ago?

A. It might be above six weeks after.

Q. Upon this visit to his Lordship, soon after this paper being published, you had no conversation with him, nor he with you, upon this subject?

A. I never had any conversation with Lord Sandwich upon the subject.

Mr. Attorney-General. You saw him?

A. I saw him.

Q. Was there any particular reason for your visit at that time to his Lordship?

A. I had been informed indeed by my brother,

brother, that Lord Sandwich wanted to see me.

Mr. Davenport. I ask, Sir, whether the purpose of the visit was not to give him an opportunity of speaking to you upon the subject?

A. It was; for I had been told Lord Sandwich wanted to speak to me upon the subject.

Reverend Roger Parry sworn.

2. Pray, Sir, was Mr. Corte employed by you, or your means?

A. I did apply to Mr. Corte from a friend of mine, to ask him if any such thing could be done; if any friend of his would give any money for an interest that might be procured in general.

2. Now give me leave to ask you what place you had in view at the time you made the application?

A. I had no place whatever in view.

2. When you made the next application what place had you in view?

A. In the month of August, I was informed by mere accident, coming in a

hackney-coach, that Mr. Commissioner Hanway was very ill, and not likely to recover; upon that I acquainted the person who applied to me that Mr. Hanway being ill, and not likely to recover, there would probably be a vacancy of his place; upon which the person asked me if I chose to mention that particular thing.

Q. Who was that?

A. A particular friend of mine.

Q. I must beg leave to ask this question: Who was that friend, male or female?

A. It was a lady.

Q. What was her name?

A. Her name was Brooke.

Q. Who is she?

A. She is the wife of a clergyman.

Q. Where does she live?

A. Upon my word I cannot answer that question at present.

Q. What is her husband?

A. He is a clergyman.

Q. What curacy has he?

A. He has a preferment in the City of Norwich.

Q. Where

Q. Where did Mr. Brooke live at this time?

A. Mrs. Brooke had lodgings in Bond-street—Mr. Brooke lived at Norwich.

Q. Let me ask you what was the reason that led you to this conversation with Mfs. Brooke?

A. Mrs. Brooke first applied to me, and said she had an interest she believed she could make use of, worth the while of any man of business who would make her a proper recompense for the use of that interest in his favour.

Q. Give me leave to ask you, if Mrs. Brooke told you what her interest was, and who she was connected with?

No answer.

Q. What was her interest, and who was she connected with?

A. It was not my Lord Sandwich, nor any person connected with Lord Sandwich.

Q. If not with Lord Sandwich, or any body connected with him, *who was it?*

A. Mrs. Brooke told me it was a German gentleman that had *some connections with the Queen's family.*

Mr. Dunning. It was not Mr. Breslaw, was it?

A. No answer.

Mr. Morgan. Now, Sir, give me leave to ask you the name of the German gentleman?

A. I am not positive I can recollect right—I believe it was Friedenburgh, or some such name.

Q. Now, Sir, did you ever see Mr. Friedenburgh upon this business?

A. No, Sir, I never saw any body but Mrs. Brooke—I was employed merely as a messenger and friend of that lady.

Q. Let me understand you—Mrs. Brooke made application to you?

A. Yes, Sir.

Q. Now, Sir, give me leave to ask you another question—Upon what terms was it proposed for this interest to be exerted?—What were the terms?

A. The terms she mentioned in general—if I might ask a man of business what might be got upon such an occasion.

Q. For this commissioner's place?

A. For that at last,

Q. First,

Q. First, in general?

A. Yes, but for this place at last.

Q. Your application was to be to a man of business, to know what could be got for this place—that was the object?

A. Yes, Sir.

Q. Now, Sir, in consequence of this, what did you do?

A. In consequence of this, I went to Mr. Corte, and had some conversation with him upon it; and he said, he thought it could not be worth any person's while, who was a proper eligible person, to be at a greater expence than a couple of thousand pounds.

Q. That was Corte's opinion, was it?

A. Yes, Sir.

Q. What then, Sir, did he tell you he would apply to any persons?

A. To particular persons—I asked him if he could think of any body; he said he could not at that time, if he did he would let me know.

Q. Did he ever give you intelligence of having applied to Captain Luttrell?

A. I don't recollect that ever he did.

2. Did not he ever communicate to you the success of his commission?

A. He never did—Before I had any conversation with Mr. Corte upon the subject again, the place was disposed of—It was in the newspapers the place was disposed of.

2. To whom was the place disposed of?

A. So far as the newspapers informed me?

2. No—from your own knowledge—Had you any conversation afterwards with Mrs. Brooke about this subject?

A. No, never.

2. Had you any conversation with any body else about it?

A. No.

2. Give me leave to ask you another question—Are you personally known to Lord Sandwich?

A. I am not.

Lord Mansfield. Question to Captain Luttrell. Will you hand up the memorandum you spoke of?

Captain Luttrell. I have not the memorandum, my Lord, but Captain Paschal went with me to Mr. Corte, in order that there might

might be no mistake about it. Mr. Corte acknowledged the conversation the same as I related to you; the paper was delivered to Captain Paschal, who has been in possession of it ever since.

Captain Paschal. My papers are all at Greenwich, and that is with them. I had not time to go to Greenwich for them.

Captain Luttrell. I clearly gave my reasons to your Lordship for having minuted it down.

Lord Mansfield. Gentlemen of the jury. This is an action brought by the plaintiff against the defendant for a defamatory libel—the paper has been read, and the words are so open, that no doubt has been made at the bar concerning the meaning, and no doubt has been made at the bar whether this action is or is not competent, and that the plaintiff is intitled to recover a verdict and damages for this defamation. A great stress (and very justly by the counsel for the plaintiff) has been laid upon the precise fact, as laid to the charge of the plaintiff, and the subsequent justification of it upon record; and that is, that
he

he being in the situation in which he is described, bargained by his agent, for the sale of an office, which is really in the gift of the King; but which, by virtue of the place in which he is, he has the recommendation, at least it is probable for him to have the recommendation, if it is not an absolute right.—Now that is a precise and specific charge of a particular fact, and it is justified as true upon record.—There is a distinction between criminal prosecutions, and actions for a libel. In a criminal prosecution, the truth or falsehood of the charge is immaterial, and cannot be gone into in evidence, because the law says, That, if a man is guilty of any crime, or breach of office, or misdemeanor, there is a remedy open by the course of law; and that remedy is to be taken, and a private man is not to traduce, or censure extrajudicially his neighbour; and therefore, in a criminal prosecution, the truth or falsehood of it never can be gone into in evidence one way or the other.—It is upon that distinction you are guilty of a crime in charging your neighbour with crimes

crimes he may be guilty of, as felony, treason, or forgery, or any other crime, because if he is prosecuted for it, that is what ought to be done.—In the case of a civil action, it is different, and you will plainly see the reason.—When a man brings an action for a defamatory charge, if the charge be true the law says this—the defendant has done wrong, and the defendant may be punished criminally, but you are not injured, and you have no right to damages, because you are guilty—You are guilty of the offence, and therefore you that are guilty cannot complain, and desire a satisfaction in damages for a man's saying that which is true of you; and therefore upon that principle it is a bar to a recovery by the plaintiff from his accepting any damages whatsoever.—A plaintiff appears in an infamous light that comes into a court of justice and says, I am guilty of felony, and yet let me have damages against the man that says I am guilty of felony.—No, says the law, you have done wrong, they should punish you for a crime against the State, but should
not

not give you damages for being accused of the crime—Therefore, in this cause, they have put their great stress upon the fact, and upon the justification upon record; for if the justification be true, it is a bar inasmuch as it is within the justification; but if the justification is false, it is a great aggravation of malice, and greatly enhances the slander.—In this case, the charge is, That Lord Sandwich sent a messenger in the dead of the night to make an offer to a man of the sale of this office for 2000*l*.—They have taken upon them to justify that charge upon Lord Sandwich as true, and that his agent—they point out the agent of and for Lord Sandwich to be one Henry Corte. Now, gentlemen, any objection in point of law to the evidence, may be waved by the parties; but to be sure, in point of law, they would have been right, and warranted, if they had said, the thing to be proved is, the man who made the offer, was Lord Sandwich's agent; because, whatever a man says and does, without Lord Sandwich's private knowledge, or interfering, is no justifi-

justification—It is no justification to say, I heard another man say the same slander—A justification to bar recovering is his own guilt—you are guilty, and therefore cannot recover damages. They have not called Corte at all.

Mr. Corte. My Lord, I am here.

Lord Mansfield. They have not called you—Corte is now present, but they have not called him, and in the justification he is asserted to be the agent that makes this corrupt offer. Well, what does Mr. Luttrell say? Why Mr. Luttrell gives a very precise account, and he lays a very good foundation for believing that if Mr. Corte had been examined, he would have concurred with him, because he put it down in writing, and afterwards giving a reason why he did so, that he had talked with Mr. Corte, and they had settled what was the real truth of it, that there might be no controversy. What is the evidence Luttrell gives throughout the whole conversation.—Lord Sandwich's name is never mentioned, and Corte never pretends that he comes from Lord Sandwich, or has any au-

authority whatever from him—Why then, what is implied from the evidence? If he had been the known agent of Lord Sandwich, or the secretary of Lord Sandwich, nothing at all could have been said about it; but it comes out otherwise, because Luttrell says he is his agent—that his first business was to talk about some money concerns, not relative to this matter.—Luttrell says, he don't know that he is, or ever was the agent of Lord Sandwich. What is the next circumstance they go to?—Luttrell having given his account to Corte, it was natural to talk about it; and he said how came you to be asked about it? The answer is, Why the Rev. Mr. Parry said so and so about it.—Then Mr. Parry is called—Parry tells you a Mrs. Brooke, a clergyman's wife in London, had some interest with somebody, and desired he would look out for any person that would give money, or would make it worth her while to make use of that interest with this somebody for any place, without distinguishing it.—The first thing that occurred to him was a commissioner's place

place of the navy, being like to be vacant upon Hanway's death, to consider whether that place would do—He talks with Corte, and asks him what might be paid by an eligible person for it. Corte thinks an eligible person would not give more for it than 2000l.—Then Mr. Parry is pressed to know who this person is, with whom Mrs. Brooke had interest? At first he *boggled*, then he said some German gentleman that *had connections in the Queen's family*—He was pressed still, and properly and rightly, to speak out, as there should be no boggle in a court of justice, but all should be explained—then he says he believes it was one Friedenburgh, but he is not sure that is the name.—Then they ask him, Do you know Lord Sandwich? He says no.

Thus stands the justification.—Gentlemen, the next, and only remaining point I have to state to you, is with regard to the evidence of printing and publishing this libel—Now with regard to that, unless the witnesses you have heard swore false, you have very full evidence to satisfy
you

you both one way and the other.—They prove by the officers of the Stamp-Office he is the printer of this paper, and they have proved he was the printer of this very number of the 30th of January to the 2d of February, by an allowance always given by the Stamp-Office for those papers that remain unfold; and they have proved that there was an allowance made to him for the unfold numbers of this very paper from the 30th of January to the 2d of February.—Then the Vintner Wartel proves he has been employed under the messenger of the press, who buys newspapers to furnish the offices with, and he has bought at this place the papers so printed about two years and a half.—He swears he bought it of a servant of the house, and the paper itself so published and sold by his servant, is said to be printed by him, and unless you can suppose that evidence is false, it is very full evidence.—You will therefore, gentlemen, find for the plaintiff.—I will not say one word to you about the damages.—I am sure no observations on any side can occur

cur to any man, which you are not capable of making yourselves.—You will take the paper out with you, and will consider all the circumstances of the case of a private or public nature.

The jury withdrew, and after being out of court one hour and three quarters, they returned, and found a verdict for the plaintiff, with two thousand pounds damages.

That places in many public offices have frequently been sold, is a matter that has been very generally believed. Those who set on foot these negotiations, and money transactions, have more sense, as well as prudence, than to suffer the business to be brought home to their own doors; and to cover this more certainly, other names are sometimes used. See the Letters in the Appendix marked E.

On the twenty-third day of May, 1778, the following statement appeared in the public prints, and was not contradicted.

VOL. I.

Y

“ A treaty

“ A treaty has been lately on foot between Mr. W——, and Sir William D——, for giving up the office of C. J—— of C. P——. Sir William insisted, as one of the conditions of the resignation, that he should reserve to himself the next nomination of the Prothonotary. Mr. W—— said he should not chuse to come into a mortgaged place, but asked how much the above-mentioned appointment would probably be sold for. Sir William replied, for 7000l. Very well, added Mr. W. I am commanded by Lord N. to say, you shall be paid that sum, provided you will resign. You are to have a Peerage besides, and a pension of 3500l. a year, which is 500l. a year more than was ever given to any C. J. whatever. These terms were accepted, but the C——r refused to put the great seal to the appointment.”

Whether the preceding account is strictly and literally correct, is perhaps impossible to ascertain. But the current opinion of the time was, that such a negotiation was on the tapis. If the fact be, as
above

above stated, it shews that a Minister can traffick in Westminster Hall, as well as in St. Stephen's Chapel.

There was an answer given by some honest judges in the reign of Queen Elizabeth, which is not unworthy of notice. The Queen had commanded them to admit a person whom she had appointed to an office, upon which they told her Majesty, in plain terms, "That her Majesty had taken her oath for the due execution of justice according to law; and they did not doubt, but when her Majesty was informed it was against law, she would act therein as became her. For their own parts, they had taken an oath to God, to her, and the commonwealth; and therefore, if the fear of God were not sufficient, they told her the punishment that was inflicted upon their predecessors for breach of their oaths might be a sufficient warning to them." Whereupon the Queen, hearing these reasons, was satisfied; and the said judges heard no more of this business. This quotation is from a tract,

324 LATE EARL OF MANSFIELD,
entitled, "The Triumph of Justice over
corrupt Judges;" in which are the names
of the forty-four Judges, condemned to die,
in the reign of Alfred.

The following is an account of Lord Mans-
field's conduct in the trial of an action—
Meares and Shepley against Ansell—at
the summer assizes in the year 1771, for
the county of Surrey; as it was given by
a gentleman who was in court.

The action was brought for trespasses com-
mitted in the plaintiffs' closes, called Bore-
man's Mead and Mill Croft. The defendant
pleaded two pleas, first, Not guilty. Second-
ly, That the defendant committed the tref-
passes by the licence of the plaintiffs. At
the trial, the trespasses were clearly proved,
with this aggravating circumstance, that
they were committed after repeated dis-
charges, and that the defendant had au-
thorized his servants wantonly to tramp
down the plaintiffs' grass when it was a foot
high, and laid up for mowing. There
not the least tittle of proof of any licence.

given by the plaintiffs; but it was urged on the part of the defendant, that the defendant was in possession of the close called Boreman's Mead, and therefore the plaintiffs, as to that close, could not maintain an action of trespass, it being a possessory action. To counteract which objection the plaintiffs counsel called one Mr. Hiscox, to produce a written agreement made between the plaintiffs and the defendant in the year 1765, and one Joseph Matthews, who was a subscribing witness to the same, to prove the execution of it.—The agreement was produced by Hiscox, after which it was taken out of his hands, and a most daring attempt made by some persons on the behalf of the defendant to suppress and stifle it. The Chief Justice by this time, for reasons known only to himself, had set his face against the cause, to the wonder and astonishment of the whole court. It was never suspected that any Judge could carry private resentments with him to the bench.—The Chief Justice beheld this most astonishing attempt to suppress evidence with the utmost composure, until the general

astonishment of the court called upon him to exert his authority ; he then compelled the production of the agreement.—The agreement, when produced, purported to be an agreement between the plaintiffs and defendant and his partner, for the formers letting the latter have the ‘ produce of hay’ (for that was the very expression) of Boreman’s Mead, in exchange for a bit of ground of the defendant’s.—There was not a syllable in the agreement about Mill Croft.—The trespasses complained of in Boreman’s Mead were for digging and opening large ditches, and converting it into a callico ground, and it was thought there could not be the least colour of pretence to say that the words ‘ produce of hay’ gave the defendant an authority to do that.—However, the Chief Justice said; the very thing the defendant had attempted to suppress made the defence.—Matthews the witness, emboldened by this extraordinary declaration, addressed the Chief Justice, and desired to give a history of the transaction ; and being permitted to do so, he then swore that although the agreement only expressed
 produce

produce of hay of Boreman's Mead, it was meant and understood, that the defendant should have the general occupation, not only of Boreman's Mead, but Mill Croft also. Mr. Hiscox confirmed the same, Lord Mansfield received and admitted this evidence, and summed it up to the jury with all the force he could, and thereupon they found a verdict for the defendant.

The Court of Common Pleas, in Michaelmas term 1771, was moved by the plaintiffs for a new trial, for the misdirection of the Judge. The Judge was called upon for his report, which he could not make without sending to the plaintiffs attorney for his affidavit of the transaction.—He made his report at last, to which he subjoined, that he was perfectly satisfied with the verdict of the jury.—The Court of Common Pleas was clearly of opinion, that Lord Mansfield had acted contrary to every principle of evidence both in law and equity, in admitting Matthews and Hiscox to give parole evidence, contrary to a clear explicit agreement in writing, which they had attested ;

and that, if such a practice was to obtain, it would go a great way towards subverting the statute of frauds and perjuries, and would be a most dangerous inlet to perjury, and a means of rendering mens properties very precarious and insecure. The court therefore set aside the verdict, and ordered a new trial ; and it appeared to the court to be so gross a misdirection, that it dispensed with the usual terms of payment of costs. Although Lord Mansfield, in his direction to the jury, represented the trespasses as small and insignificant, and the action as litigious, the Court of Common Pleas said the trespasses were obstinate, wilful, and malicious.

Mr. Rowlinson, an eminent attorney of the Temple, employed by the plaintiffs in the above cause, was so disgusted with the conduct of Lord Mansfield, that he caused a motion to be made in the court of King's-bench, that he might be struck off the rolls of that court, which (after some expressions of astonishment) was granted ; and Mr. Rowlinson was immediately afterwards admitted

mitted of his Majesty's Court of Common Pleas.

A correct Copy of Lord Mansfield's Speech on the 25th day of November, 1774, in giving the judgment of the Court of King's-bench, in the cause of Campbell against Hall, respecting the King's Letters Patent, on the 20th of July, 1764; for raising a duty of four and an half per cent. on all exports from the Island of Grenada.

This case of Alexander Campbell against William Hall, is an action that was brought by the plaintiff, who is a natural-born subject of this kingdom, and who, upon the 3d of March, 1763, purchased a plantation in the Island of Grenada; and it is brought against the defendant, Hall, who was collector for his Majesty of a duty of four and an half per cent. upon goods or sugars exported from the Island of Grenada; and the action is brought to recover back a sum of money which was paid as this duty of four and an half per cent. upon sugars that were exported

ported from the Island of Grenada, by and on account of the plaintiff; and the action is for money had and received; and brought upon this ground: That the money was paid to the defendant without any consideration for the duty for which, and in respect of which, he received it, not having been imposed by lawful or sufficient authority to warrant the same. And it is stated by the special verdict, that that money still remains in the defendant's hands, not paid over by him to the use of the King, but continued in his hands, and so continues with the privity and consent of his Majesty's Attorney-general, for the express purpose of trying the question as to the validity of imposing this duty.

It came on to be tried at Guildhall, and of course, from the nature of the question, both sides came prepared to have a special verdict; a special verdict was found, which states:—

That the Island of Grenada was taken by the British arms, in open war, from the French king.

That

That the Island of Grenada surrendered upon capitulation ; and the capitulation upon which it surrendered, was by reference to the capitulation upon which the Island of Martinico had before surrendered.

The special verdict states some articles of that capitulation ; and particularly the fifth article, by which it is agreed :—

“ That Grenada shall continue to be governed by their present laws, until his Majesty’s pleasure be known.” They likewise take the sixth article, where, to a demand of the inhabitants of Grenada, that they should be maintained in their property and effects, moveable and immoveable, of what nature soever, and that they should be preserved in their privileges, rights, honours, and exemptions ;—the answer is, “ The inhabitants, being subjects of Great Britain, will enjoy their properties, and the same privileges as any other of his Majesty’s Leeward Islands ;”—So that the answer is, That they will have the consequences

sequences of their being subjects; and they will be as much subjects as any of the other Leeward Islands.

Then they state another article of capitulation, the seventh, and by that article they demand—"They shall pay no other duty than they paid to the French King; that the capitation-tax shall be the same; and then the expences of courts of justice, and the administration of government, shall be paid out of the King's domain, and other articles of that kind;" in answer to which they are referred to the answer I have just stated, given to the foregoing articles:—That is, "*being subjects,* they will be entitled to all the rights, liberties, and properties, with a reference to the subject then before their eyes, in the Leeward Islands."

The next thing stated in the special verdict is the treaty of peace, signed the 10th of February, 1763; and they state the parties to the treaty of peace, by which the
Island

Island of Grenada is ceded; and some clauses of it which are not at all material for me particularly to state.

The next instrument that they state is a proclamation under the great seal, bearing date the 7th of October, 1763, wherein, among other things, it is said—

“Whereas it will greatly contribute to
 “the speedy settlement of our said govern-
 “ments, of which Grenada is one, that
 “our loving subjects should be informed of
 “our paternal care for the security of the
 “liberties and properties of those who are,
 “and shall become inhabitants thereof;
 “we have thought fit to publish and de-
 “clare, by this our proclamation, that we
 “have, in the letters patents under our
 “great seal of Great Britain, by which the
 “said governments are constituted, given
 “express power and direction to our go-
 “vernors of the said colonies respectively,
 “That as soon as the state and circum-
 “stances of the said colonies will admit
 “thereof, they shall, with the advice and
 “consent

“ consent of the Members of our Council,
 “ summon and call general assemblies
 “ within the said governments respectively,
 “ in such manner and form as is used in
 “ those colonies and provinces in America,
 “ which are under our immediate govern-
 “ ments : And we have also given power to
 “ the said governors, with the consent of
 “ our said governors and representatives of
 “ the people, to be summoned as aforesaid,
 “ to make, constitute, and ordain laws,
 “ statutes, and ordinances for the public
 “ peace, welfare, and good government of
 “ our said colonies, and inhabitants thereof,
 “ as near as may be agreeable to the laws
 “ of England, and under such regulations,
 “ and restrictions as are used in our colo-
 “ nies.”

The next instrument stated in the special
 verdict, is the letters patents under the
 great seal, or rather a proclamation under
 the great seal, bearing date the 26th of
 March, 1764, where the King recites a
 survey and division of the ceded islands—
 “ That he had ordered them to be divided
 “ into

“ into allotments, as an invitation for all
 “ purchasers to come in and purchase upon
 “ terms and conditions specified in that
 “ proclamation.”

The next instrument stated, is the letters patents under the great seal, bearing date the 9th of April, 1764; and in those letters patents there is a commission and authority to Governor Melville, who was appointed governor of this Island, to summon an assembly as soon as the state and circumstances of the Island will admit; and with the consent of the governor and council, make laws in all the usual forms, towards which there is a reference to the manner of other assemblies of the King's provinces in America.

The governor arrived in Grenada the 14th of December, 1764, and before the end of the year 1765, the assembly actually met in the Island of Grenada; but between the arrival of the governor at Grenada, indeed before his departure from London, there is another instrument, upon the validity

dity of which the whole question turns, that
 is stated in the special verdict; the letters
 patents under the great seal, bearing date
 the 20th of July, 1764, reciting, "That
 " in Barbadoes, and all the British Leeward
 " Islands, there was a duty of four and an
 " half per cent. paid upon the export of
 " goods," and reciting in these words;
 " Whereas it is reasonable and expedient, and
 " of importance to our other sugar colonies,
 " that the like duty should take place in
 " our said Island of Grenada, we have
 " thought fit, and our royal will and plea-
 " sure is, and we do hereby, by virtue of
 " our prerogative royal, order, direct, and
 " appoint, that an impost or custom of four
 " and an half per cent. in specie, shall, from
 " and after the 29th of September next,
 " ensuing the date of these presents, be
 " raised and paid for, and upon all dead
 " commodities, the growth and produce of
 " our said Island of Grenada, which shall
 " be shipped from the same, in lieu of all
 " customs and import duties, hitherto col-
 " lected upon goods, imported and ex-
 " ported into, and out of, the said Island,
 " under

“ under the authority of his Most Christian Majesty, and that the same shall be collected;” then is the reference to the manner in which it was collected in the British Leeward Islands.

Then the special verdict states, “ That in fact, four and an half per cent. is paid to his Majesty in all the British Leeward Islands;” after which it states all the acts of assembly relative to this duty;—they are public acts, I shall not state them, as any gentleman may have access to them; they depend upon different circumstances and occasions, but all referable to those duties in our Islands. This, with what I set out with in the opening, is the whole of the special verdict, that is material to the question.

The general question which arises out of all the facts found by the special verdict is this, Whether the letters patents, of the 20th of July, 1764, are good and valid to abolish the French duties, and in lieu thereof to impose this of four and an half

per cent. which is paid in all the British
Leeward Islands?

: That the letters patents are void, has been
contended at the bar upon two points; the
first point is:

• That although they had been made be-
fore the proclamation of the 7th of October,
1763, yet the King could not exercise such
a legislative power over a conquered coun-
try.

The second point is: That although he
had sufficient authority before the 7th of
October, 1763, to do such a legislative act,
yet by the proclamation of the 20th of
July, 1764, he had divested himself of that
authority.

A great deal has been said, and authori-
ties cited, relative to propositions, in which
both sides expressly agree, all which are too
clear to be controverted.

The stating some of those propositions,
which

which we think clear and uncontrovertible, will lead us to see, with more perspicuity, what is the question upon the first point, and upon what hinge it turns.—I will state the propositions at large; the first I shall state is this:

A country, conquered by the British arms, becomes a dominion of the King in right of his crown, and therefore, necessarily subject to the legislature, the Parliament of Great Britain.

The second is, That the conquered inhabitants, once received under the King's protection, become subjects to him, and are universally to be considered in that light—not as enemies or aliens.

The Third:—That the articles of capitulation, upon which the country is surrendered, and of a treaty of peace, by which it is ceded, are sacred and inviolable, according to their true intent and meaning.

The Fourth:—That the law and legislative

tive government of every dominion, equally affects all persons and property within the limits thereof, and is the true rule for the decision of all questions which arise there— whoever purchases, lives, or sues there, puts himself under the laws of the place.— An Englishman, in the Island of Minorca, the Isle of Man, or the Plantations, has no privilege distinct from the natives.

The Fifth proposition I shall state is :— That the laws of a conquered country continue until they are altered by the conqueror.—The absurd exception, as to Pagans, mentioned in Calvin's case, shews the universality and antiquity of the maxim :— The exception could not exist before the Christian era ; and, in all probability, arose from the mad enthusiasm of the Croisades. —In the present case, the capitulation expressly provides and agrees, “ they shall continue to be governed by their present laws, until his Majesty's pleasure be known.”

The Sixth and last proposition, that I shall

shall mention, is this:—That if the King has a power, (and when I say the King, I always mean the King without the concurrence of Parliament) to alter the old, and intrude new laws in a conquered country, this legislation being subordinate, that is, subordinate to his own authority in Parliament, he cannot make any change contrary to the fundamental principles:—He cannot exempt an inhabitant from that particular dominion; as, for instance, from the laws of trade, or from the power of Parliament; or give them privileges exclusive from other subjects; and so in many other instances which might be put.

The present change, if made before the 7th of October, 1763, recently after the cession, by treaty, is most equitable, reasonable, and political; it is putting Grenada upon the same footing, as to duty, with all the British Leeward Islands.—If Grenada paid more, it would be detrimental to her;—if she paid less, it must be detrimental to the other Leeward Islands; nay, it would be carrying the capitulation into execution which gave the people of Gre-

nada hopes, That if any new duty was laid on, their case would be the same with their fellow subjects in the other Leeward Islands.

The only question then upon this point which remains, is, Whether the King had power to make such a change between the 10th of February, the day the treaty of peace was signed, and the 7th of October, 1763? That is the only question. Taking these propositions which I have stated to be true and clear, the only question that remains is, Whether he had of himself that power?—It is limited, by the constitution, to the King's authority, to grant or refuse a capitulation.—If he refuses, and puts the inhabitants to the sword, or exterminates them, all the land belongs to him:—If he receives the inhabitants under his protection, and grants them their property, he has a power to fix the terms and conditions:—he is interested with making the treaty of peace, he may yield up the conquest, or retain it, upon such terms as he shall think fit to agree to. These powers no man ever disputed; neither has it hitherto been controverted, but that the King might change
part

part of, or all the political form of the government of a conquered dominion.

To go into the history of conquests, made by the crown of England :—The alteration of the laws of Ireland has been much discussed by lawyers and writers of great fame, at different periods of time.—No man ever said that the change was made by the Parliament of England ; no man ever said the crown could not do it.—The fact, in truth, after all the researches which have been made, comes out clearly to be as laid down by Lord Chief Justice Vaughan, “ That Ireland received the laws of England by the “ charters and command of Henry the “ Second, King John, Henry the Third ;” and he adds an *et cetera*, to take in Edward the First and subsequent Kings :—and he shews most clearly, the mistake of imagining, that the charter of the twelfth of King John was by the assent of a Parliament of Ireland.—Whenever a Parliament was first called in Ireland, that change in their constitution was introduced without the interposition of the Parliament of England,

and therefore must be derived from the crown.

Mr. Barrington is well warranted in saying, The statute of Wales of the twelfth of Edward the First is certainly no more than regulations, made by the King in his council, for the government of Wales, which the preamble says, was then totally subdued; though he takes, for various political purposes, Wales to be a feoff of his crown, which, in fact, was a fiction, yet he governed it as a conquest; for Edward the First never pretended that he could, without the assent of Parliament, make laws to bind any part of the realm.

Berwick, after the conquest of it, was governed by charters from the crown, till the reign of James the First, without the interposition of Parliament:---Whatever changes were made in the laws of Gascony, Guienne, and Calais, must be under the King's authority, because all the acts of Parliament relative to them are extant; for they were conquered in the reign of Edward the

the Third, and all the acts of Parliament since the time of Edward the Third are extant.—There are some acts of Parliament relative to each of those conquests I have named, and none for any change of their laws; and particularly with regard to Calais, which he alluded to, as if their laws were considered as given by the crown. With regard to the inhabitants, their property, and trade of Gibraltar, ever since that conquest, the King has made orders and regulations fuitable to the condition of those who live, or trade, or enjoy property in that garrisoned town.

Mr. Attorney-general alluded to a variety of instances, and several very lately, that is, within these twenty years, or thereabouts, in which the King had exercised legislation in Minorca.—In Minorca it is said there are a great number of inhabitants of worth; and that a great trade is carried on:—If the King does it, as coming in the place of the King of Spain, because their old constitution continues, the same argument holds here; for before the 7th of October, 1763,
the

the constitution of Grenada continued; and the King stood in the place of their former Sovereign.

After the conquest of New York, in which most of the old Dutch inhabitants remained, King Charles the Second changed the form of their constitution and political government, by granting it to the Duke of York, to hold from his crown, under all the regulations contained in the letters patents.

It is not to be wondered, that an adjudged case in point, has not been produced—no dispute ever was started before upon the King's legislative authority over a conquest:—it never was denied in Westminster Hall:—it never was questioned in Parliament.—Coke's report of the arguments and resolutions of the judges in Calvin's case, lays it down as clear:—If the King (says the book) comes to a kingdom, by conquest, he may change and alter the laws of that kingdom: but if he comes to it by title and descent, he cannot change the same of himself,

self, without the consent of Parliament; and therefore, though the King in general has that right (it is plain he alludes to his own country, for he alludes to a country where there is a Parliament, and where there is that distinction) if he was the King of a country, over which he was absolute, there would be no distinction between the old and new dominion; but he states the distinction in direct contra-distinction, to shew what the King could do without, and what he could not do without the assent of Parliament.—The authority also of two great names has been cited, who took the proposition for granted. In 1722, the assembly of Jamaica being refractory, it was referred to Sir Philip York, and Sir Clement Worge, to consider what could be done if the assembly should absolutely continue to withhold all the usual supplies:—They report thus: That if Jamaica was still to be considered as a conquered Island, that the King had a right to lay taxes upon the inhabitants, but if it was to be considered in the same light as the other colonies, no tax could be imposed upon the inhabitants, but
by

by an assembly of the Island, or by an act of Parliament.—The distinction in law, they consider as a clear and indisputable consequence of the Island being in the one state or the other.—Whether it remained a conquest, or was made a colony, they had not examined.—I have upon former occasions, traced the constitution of Jamaica; as far as there are books, or papers, in the offices;—I cannot find that any Spaniard remained upon the Island of Jamaica so late as the Restoration; if any, they were very few. A gentleman, who was well informed, to a question I put to him upon one of the arguments of this case, said, He knew of no Spanish slaves among the white inhabitants of Jamaica; but there were among the Negroes.

The King (I mean Charles the Second) after the Restoration, by proclamation, invited settlers, promising them protection:—He made grants of lands in Jamaica: he appointed at first, a governor and council only; afterwards he granted a commission to the governor to call an assembly, the constitution of every Province; immediately

diately under the King has arisen, in the same manner, not the grants but the commissions to call assemblies; and, therefore, all the Spaniards having left the Island, or been driven out of Jamaica, the first settling was an English colony, who, under the authority of the King, planted a vacant Island belonging to him in right of his crown. Like the cases of the Islands of St. Helena, and St. John, mentioned by Mr. Attorney-general, a maxim of constitutional law, with all the judges in Calvin's case, and two such men in modern times as Sir Philip York and Sir Clement Worge, I take it for granted, will acquire some authority: but, on the other side, no book, no saying, no opinion has been cited; no instance has been found in any period of our history where a doubt has been raised concerning it:—the council for the plaintiff undoubtedly laboured this point from a diffidence or an uncertainty of what might be our opinions upon the second argument; but after full consideration we are of opinion, “ That before the 20th of July, 1764, “ the King had precluded himself from the
“ exercise

"exercise of a legislative authority over the
 "Island of Grenada."

The first and material instrument is the
 proclamation of the 7th of October, 1763:
 —See what it is that the King says; and
 with what view he says it; and how he
 engages himself and pledges his word:—He
 says; "Whereas it will greatly contribute
 "to the speedy settling of our new govern-
 "ment, that our loving subjects should be
 "informed of our paternal care for the sake
 "of the liberties and properties of those
 "who are, and shall become, inhabitants
 "thereof, we have thought fit to publish
 "and declare, by this our proclamation,
 "that we have, by our letters patents under
 "the great seal, commissioned our go-
 "vernor, and given directions as soon as
 "the state of the said colonies will admit
 "thereof, to call general assemblies, to
 "make laws, as near as may be agreeable
 "to the laws of England," and all the ge-
 neral words necessary for that regulation.—
 With what view is that promise made re-
 citing the commission as actually given? It

is to invite settlers; to invite subjects:—
 Why to invite them? The reason is given—
 that they may think their liberties and pro-
 perties more secure if the legislation was
 vested in the assembly and not in the go-
 vernor and council:—When by governor
 and council, they depending upon the
 King's pleasure, he can recal and give a
 new frame to the constitution; but the
 other is not depending upon the right of the
 King, but a negative upon those parts of
 the legislature that depend upon the King;
 —therefore, that assurance is given them
 for the security of their liberties and pro-
 perties, and with a view to invite them to
 go and settle there, after this proclamation,
 that assured them of their constitution under
 which they are to live.

The next act is of the 20th of March,
 1764:—Having established their constitu-
 tion by proclamation, invites them to come
 in as purchasers; to live in this Island un-
 der that constitution which had been before
 promised them, (it states the particular
 terms and conditions upon which allotments
 were

were to be bought) in further confirmation to do every thing that depended upon the King. Upon the 9th of April, 1764, two months before these letters patents, there is an actual commission to call an assembly as soon as the state and circumstances of the Island will admit:—you will observe in the proclamation there is no reservation of any legislature to be exercised by the King, or by the governor and council, under his authority; or any other method or manner until the assembly should be called:—the promise imports the contrary; for whatever construction is to be put upon it, (which, perhaps, may be very difficult through all the cases to which it may be applied) it alludes to a government by the laws in being, and by courts of justice, not by a legislative authority, until an assembly should be called:—but there does not appear from the special verdict any memorandum of calling an assembly in Grenada before, but as soon as the governor should arrive:—that fact shews there was none before.—He arrived in December, 1764, and the assembly actually met to do business
before

before the end of the year 1765;—We therefore think, by the two proclamations, and the commission to governor Melville, the King had immediately and irrevocably granted to all who did, or should, inhabit, or who had, or should, acquire property in the Island of Grenada, or more generally to all whom it might concern, that the subordinate legislation over the Island should be exercised by the assembly, with the consent of the governor and council, in like manner as in other provinces under the King. Therefore, though the abolishing the French duties, and in lieu thereof substituting the same duty, which according to the finding of this verdict is paid in all the British Leeward Islands, be just and equitable, in respect to Grenada, and the other British Islands, yet through the inattention of the King's servants, inverting the order in which the instrument should have passed, and been notoriously public, the last act we think is contrary to, and a violation of the first, and therefore void; how proper soever the thing may be respecting the object of the letters patent of the 20th of July, 1764,

it can only now be done (to use the words of Sir Philip Yorke, and Sir Clement Worge) by an assembly of the island, or by an act of the Parliament of Great-Britain.

The consequence of this is, judgment must be given for the plaintiff.

The conduct of Lord Mansfield on the question concerning literary property is well known. He gave a judgment in the Court of King's-bench, by which the London booksellers were induced to believe they had a permanent property in what they bought; and when the matter came to be argued in the House of Lords, upon an appeal, and he was firmly attacked by Lord Thurlow, (then Attorney-general, and counsel for the appellant), and all his doctrine reprobated by Lord Camden, he had not courage to rise up in his place and defend his own judgment. He said not a word.

If he was ambitious of being thought a Mæcenas, which was supposed, that may be pretended to be some excuse for his judg-

ment on this question in the Court of King's-bench, but cannot apologize for abandoning his own character in the House of Lords.

By his patronage of Sir John Dalrymple, who compiled "The Memoirs of Great Britain," already mentionnd in the preceding chapter; and of Mr. Lind, who wrote some tracts entitled, "Letters on Poland," in which the late King of Prussia is treated with great asperity; and some tracts against America, during the American war, in support of the ministry; and of some other writers of the same principles; perhaps he flattered himself with the hopes of being esteemed an encourager of literary men. But avarice was his ruling passion. He used to say, those who purchased estates, preserved their principal but received no interest; those who bought in the funds, had interest but no principal. He laid out his money in mortgages, and good securities, by which he had both principal and interest.

His Lordship was also ambitious of being thought a statesman. Upon one occasion

only he shone as a politician : this was his attack on the Suspending and Dispensing Prerogative in the Year, which was undoubtedly made with great ability, but the case may be said to have been more a matter of jurisprudence than politics, and although he gave to his eloquence all the advantages he had acquired by a long exercise, yet the merit of the attack is lessened, when it is recollected that Lord Camden had maintained the necessity of a suspending power in a case of imminent danger of famine, which was the fact, and that Lord Mansfield warmly embraced this opportunity of upholding a true constitutional doctrine, to gratify his envy and hatred of Lord Camden. His motive was founded in personal rancour, not in constitutional. All those who are acquainted with the history of the time will not hesitate to admit this distinction. But the tract which was published, called "A Speech against the Suspending and Dispensing Prerogative," and contained all that Lord Mansfield advanced in his speech upon this subject in the House of Lords, was not written by his Lordship; although generally
believed

believed to have been his production, nor was he privy to the writing or publication. The pamphlet was written by Lord Temple, and Lord Lyttelton, and a gentleman who was present at the debate, and states in the form of one speech all the arguments on that side. However, Lord Mansfield's motives may be excused, if the severity of his attack makes Ministers more assiduous in their duty, for they had information of the approaching danger, and did not attend to it; if they had, such attention would have prevented the necessity of resorting to so violent a remedy.

Of his Lordship's political opinions and conduct, it would have been happy for his country if they had been founded in those just principles of all government, which make the honour of the state and the interests of the people perfectly the same. His political ideas were like those of Lord Bute; they were contracted, splenetic, and tyrannical. No better proof need be given than his memorable apostrophe in the House of Lords, in the year 1774, upon the Bos-

ton Port Bill, in reply to Lord Dartmouth, at that time Secretary of State for the Colonies. His Lordship said, "the sword was drawn and the scabbard thrown away. We had passed the Rubicon;" alluding to Cæsar's march to Rome. This was not less a prophetic and dreadful denunciation to the interests of Great Britain, than the inscription on the bridge over the Rubicon was to the fate of Cæsar, and the liberties of Rome.

Montesquieu, in considering the causes of the grandeur and declension of the Romans, observes, that "policy had not permitted armies to be stationed near Rome, for this reason considerable forces were kept in Cisalpine Gaul; but to secure the city of Rome against those troops, the celebrated *Senatus Consultum* was made, still to be seen engraven on the way from Rimini to Cesena; by which they devoted to the infernal gods, and declared to be guilty of sacrilege and parricide, those who should with a legion, with an army, or with a cohort, pass the Rubicon." Montanus gives the inscription at length, which is stronger than Montesquieu

quieu states, and says that Aldus Manutius, in the year 1565, in his way from Venice to Rome, saw this inscription, and carefully transcribed it. When Cæsar, in his march for Rome, had advanced to the Rubicon, he paused a few moments at this inscription, but his ambition prevailing, he passed over the bridge and then exclaimed, "the lot is cast, let the gods do the rest!"

Whoever knows Lord Mansfield's influence in the British Cabinet, will say this was the die of America. See more of Lord Mansfield's politics in the Appendix marked F and G, written by Messieurs Burkes.

In the progress of the American war, Lord and General Howe had not the success which his Lordship expected, and he could not help expressing his disappointment at dinner at one of the Surrey asizes; the subject of conversation being the American war, Lord Mansfield said, "the Howes had no heads;" to which Sir — Clayton neatly replied, "then what will become of the heads of those who sent them?"

Lord Sandwich did not approve of the joint-appointment of Lord and General Howe. He said, he liked them very well *separately*; but thought that sending them *together* was injudicious, and impolitic.

The two last trials for libels, which Lord Mansfield tried, were in the month of February, 1786; upon actions brought by the Right Honorable William Pitt, First Lord of the Treasury, &c. against the printers of the General Advertiser, and the Morning Herald; for having said in their papers, that he had gambled in the stocks. The trial of the General Advertiser came on first. Lord Mansfield's charge to the jury was as follows:

Gentlemen of the jury, you have had a very ingenious speech, (from the Hon. Mr. Erskine, who was counsel for the defendant,) but upon a false foundation; the speech is to prove that a man of the fairest character may be with the greater impunity traduced—from defamation the law implies a damage, and the proof of actual damages is not necessary to sustain an action; it is
said

said if it was a man of so fair a character as not to suffer by calumny, he would bring no action at all, but the law implies the damage, it is the province of the jury in their discretion to assess it, and in doing that they are to take into consideration the character and situation of the plaintiff, the malice and malignity of the libel, the nature of the example, and in short every other consideration to induce them to assess what damages they should imply for that foul offence. My Lord Sandwich proved no special damage that he had sustained by the libel he brought an action for; the jury gave him 2000l. damages: and the other day when a libel in defamation of Lady Salisbury was tried before me, she sustained no particular damage, there was no pretence to prove it, the jury gave her 500l. no man alive ever thought the jury did wrong. In these cases you are to consider the malignity, the false tendency, and all the other circumstances in the case. And in this case I think the plaintiff deserves the thanks of the public for bringing such a particular attack upon his character under the opinion of a jury.

Gentle-

Gentlemen, you see what sense they would put upon such conduct, the assertion is certainly a very foul one, stock-jobbing is gaming in the stocks, and gaming upon the speculation of the future contingency of the rise or fall of the stocks. Now I agree with Mr. Bearcroft, (counsel for Mr. Pitt,) it is scandalous in a private man who knows the events of politics which another does not, and deals with a man with that superior knowledge and advantage, it is not a fair bargain, for you know what the price is and the other does not know, therefore you take an undue advantage of him ; but in a Minister it is every way infamous and scandalous, because if you consider for a moment, suppose a negotiation for a peace, and the Minister engages for a peace, there will be a rise in the funds, he is bribed by that consideration to bring that peace about at any rate, it is as much a bribe upon his conduct as if it was given him by a foreign court, so that upon a Minister it is a strong charge of defamation ; here it is a specific fact, it is printed in the newspapers, it is circulated all over the kingdom, it is circulated all over foreign countries, and how do

do they know whether it may not be true; to be sure many Ministers have done it, some have been known to do it, some have been suspected, others have stood clear, but when you carry it to all the different parts of the kingdom, and carry it to the continent, how do they know there may not be such a negociation, when in a newspaper in the capital, such a report and such an idea has got out, that there is a dealing, and therefore the plaintiff has done right in a fact that might be true or might be false, to bring his prosecution in the shape of an action; because you are truly told the defendant may in that shape of prosecution justify, and if he had justified the plaintiff ought not to recover in this action; to be sure example is a consideration likewise mixed in it, and most undoubtedly we all know and feel the terrible mischief that arises from these diurnal publications: in those periodical publications nobody is spared, no Minister, no private man, no lady, no foreign minister, no person, foreign or domestic. The assessing of damages is entirely in your province. I shall not say
a word

a word upon it, you will consider them under all the circumstances of the case, the malignity and the intent, and, for the sake of example, you will give those damages you think proper.

The jury went out, and staid near an hour, when they returned with a verdict for the plaintiff, 150*l*.

The trial of the Morning Herald immediately succeeded, when Lord Mansfield gave the following charge to the jury.

Gentlemen of the jury, it is a very serious and important matter that is before you; it is a question in which all the King's subjects are concerned, whether there should be a protection to the reputations of men, either in public or private life; therefore it is very serious; if men are indemnified for the diffusing scandal, they must take the consequence for those behind the curtain. If they do it without being indemnified, or without having a protection, or from malice of their own, either way, innocence should
be

be protected. I will give you these three papers out with you for you to consider of yourselves, and exercise your own judgment upon them. They seem to be more malignant and aggravating than the other; it is aggravated by this strong circumstance, the dates are the 7th and 14th of October, and the first paper of the General Advertiser, is not till the 20th of October; so that this paper, as between them, is the forger of the lye, and the other may have copied it from that paper; he is not excusable for having copied it, but the first inventor is the most mischievous.

Another consideration between them is, it is wrapped up in language to convey the truth of it, and to assure the plaintiff it is now discovered by his friends, who were making an excuse for him; but his friends now admit of it, and begin to believe it themselves; and with particular circumstances, that he concealed the preliminaries of the Dutch peace, that he might gamble in the stocks, in contemplation of the rise. God forbid I should ever subscribe to a doctrine,

trine, that the fairer a man's character is, the less reparation should be given for defamation. I think the contrary; and that the fairer the character is, the more unjust is the defamation. You will take the three papers out with you, and consider of your verdict, and what damages you will give.

The jury brought in their verdict for the plaintiff, Damages 250l. after being out ten minutes.

His Lordship resigned in the year 1788, and died in the month of March, 1793.

CHAPTER XV.

THE LATE EARL CAMDEN,

(LORD CHANCELLOR.)

His Opinion of the Rights of Juries, in Contradiction to Lord Mansfield's, first shewn in the Trial of Owen. Prosecution of Dr. Shebbeare. Mr. Wilkes's Opinion of his Book. Lord Camden's Opinion on a deceased King. Mr. Grenville's Observation upon it. Shebbeare sentenced to the Pillory, but not put into it. Beardmore's Affidavit. Lord Mansfield's Observation on it. Dr. Shebbeare rewarded with a Pension. Lord Camden attached to Lord Chatham. Appointed Chief Justice. Cause of his being made a Peer. Opposes the American Declaratory Bill. Mr. Grenville complains of his Speech. Lord Camden made Lord Chancellor. He defends the Suspending Power. Lord Temple contrasts his Declarations. Attacks Lord Temple sharply. Junius defends Lord Temple. Observations on the Manner of pardoning M^r Quirk. Curious Evidence of Mr.

*Mr. Bromfield. State of the Case of Peter-
son v. Rolfe. Lord Camden's Remarks on
the Discretion of a Judge. Opposes in the
Cabinet the Expulsion of Mr. Wilkes. Turned
out of his Post as Lord Chancellor. Death
of Mr. Yorke. Great Seal put into Com-
mission. Decrees made by Lord Mansfield.
Lord Apsley made Chancellor. Sir Fletcher
Norton's Bon Mot. Lord Camden retires.
Supports the Libel Bill.*

THIS Noble Lord will appear a great and splendid character, in the history of the period in which he lived. He was a sincere supporter of the constitutional right of juries, and a sincere friend to the constitutional principle of Parliamentary taxation. The first was amply exemplified in his opposition to Lord Mansfield, and the latter in defence of America.

His regard for the rights of juries appeared as early as the year 1752.

On the trial of William Owen, bookseller, which was at Guildhall, London, in the month

month of July, 1752, for publishing a pamphlet entitled, "The Case of Alexander Murray, Esq." concerning the Westminster election; his Lordship, then Mr. Pratt, was council for the defendant; and Lord Mansfield, then Mr. Murray, and Solicitor General, was council for the crown. On this occasion was first shewn the great difference in their opinions concerning the law of libel.

Mr. Murray maintained, that the question for the jury to try, was, whether the defendant published the pamphlet? the rest he said followed of course. If the *fact* of publication is proved, the libel proves itself, seditious, malicious, scandalous, &c. therefore the printer must be affected with every thing in the pamphlet. If the fact of publication is proved, and that is what lies for your determination, you (the jury) being judges of the *fact*, the judge determines the *law*. As you are upon your oaths, "to well and ducly try, and a true verdict give, according to the evidence," you will judge of the facts we have laid before you, now in

VOL. I. B b court,

court, and *only* them, and like honest men bring in your verdict accordingly.

[The publication was proved by persons who had been purposely sent to buy the pamphlet.]

Mr. Pratt, for the defendant, maintained that the jury were judges of the whole case; that there was another fact besides the publication which was equally necessary to be proved; this was the fact of the charge in the Attorney-General's information. The defendant is charged with having published this pamphlet, maliciously, seditiously, scandalously, and falsely, to the calumny of the House of Commons of Great Britain, and in order to disturb the peace of the nation; and this he has done wittingly, wilfully, maliciously, scandalously, &c. This is the FACT laid to his charge; which the gentlemen have been very far from PROVING. Only proving the sale of the book, does not prove all those opprobrious and hard terms laid in the charge against him. If his selling this

this book maliciously, with a seditious intent, scandalously and falsely, with a design to calumniate the House of Commons, and in order to disturb the peace of the nation, is not proved, then this great charge in the information fails. Let the gentlemen prove those words (the intention) if they mean any thing by them; if they do not prove these terms, this bad intent, for in that lies the crime, then it is no more than selling printed paper, in which surely there can be no fault. Then what are these words? If the gentlemen mean any thing by them, prove them; if they mean nothing, but words of course and form, let the gentlemen scratch them out, they are needless; which if they do, their information will be very defective. But they will not consent to scratch them out I am sure; why then they must mean something by them, which if they do, consequently they must prove them. These words constitute the charge, which if they do not make out, will you, gentlemen, lay your hands upon your hearts, and say this man is guilty?

guilty of what? nothing; for nothing is proved, unless selling paper is a crime. Then, gentlemen, to shew you how necessary it is to prove the intention, if there is an indictment preferred against a man for an assault, with an intention to ravish, the intention must be proved, or else the jury cannot find him guilty. The same of an assault, with an intention to kill, if the intention is not proved, he must be acquitted. If he kills, and the intention is not proved; that is, if it is not proved that he killed premeditatedly and of forethought, it is but manslaughter. Therefore in the case before us, if that part of the information is not proved that he published maliciously, &c. you must acquit him. Much might be said more than we dare say for our client in this case: our mouths are already half shut, and the tenets the gentlemen on the other side lay down, are to shut them quite; but may neither you, this nation, nor I, ever feel the effects of such tenets, or see them put in practice. [The defendant was acquitted.]

In

In the year 1757, he was appointed Attorney-General in the room of Sir Robert Henley, afterwards Earl of Northington.

In the year following, Dr. Shebbeare having published a pamphlet called "A Sixth Letter to the people of England, on the progress of national ruin; in which it is shewn, that the present grandeur of France, and calamities of this nation, are owing to the influence of Hanover on the counsels of England;" was prosecuted for this pamphlet by Mr. Pratt, in his official capacity. Of this libel Mr. Wilkes says (in his letter to Mr. Grenville) "that it scarcely contained a single truth; it traduced the Revolution, aspersed the memory of King William the Third, vilified King George the First and Second, and bastardized the whole royal family."

In support of the prosecution, the Attorney-General contended, that the conduct of a dead King may be libelled as well as that of a living one.

In the debate in the House of Commons upon Mr. Wilkes's petition, which was presented in the month of November, 1768, it was contended, that a former Parliament might be libelled as well as the present one.

Upon these two positions, Mr. Grenville, in one of his letters, remarks, "If it be true, that the proceedings of former Parliaments are not to be questioned, nor the conduct of former Kings to be blamed, it will be utterly impossible to write any history, except a panegyric out of the Gazette."

Lord Mansfield said, in his charge to the jury, "that Dr. Shebbeare had, in that letter, approached the nearest to high treason, without actually committing it, of any paper he ever read." He was convicted and sentenced to stand in the pillory at Charing Cross. Mr. Arthur Beardmore, an attorney in Walbrook, being under-sheriff at that time, attended the execution of this part of the sentence.

He

He was in a house opposite to the pillory. Dr. Shebbeare was greatly favoured; instead of putting his head *in* the hole of the pillory in the usual mode, the upper board was raised as high as possible, and there fastened. Shebbeare stood upright, without ever bending his neck in the least; looking through the wide opening between the upper and lower boards.

The Attorney-General was exceedingly incensed by this indulgence shewn to Shebbeare; and he obtained a writ of attachment against Beardmore for his contempt, in not executing the sentence properly. Beardmore in his defence upon oath said, That he attended the execution of the sentence, and saw Shebbeare's head *through* the pillory. Lord Mansfield remarked, that this was the most ingenious evasion of perjury he had ever met with. Beardmore was fined fifty pounds for his contempt.

Upon the change of the Ministry, a little time after the accession of his present

Majesty, Shebbeare was allowed a pension of four hundred pounds per annum ; but when Mr. Grenville succeeded to the Treasury in the year 1763, he reduced it one half.

In political sentiments, Lord Camden was attached to Lord Chatham, from the time he was made Attorney-General. At the general election in the year 1761, he was elected Member for Downton ; and in the year 1762, he was appointed Chief Justice of the Common Pleas, in the room of Sir John Willes. His honourable, firm and constitutional conduct in the memorable case of Mr. Wilkes, the trials of the King's messengers, of the Secretary and under Secretary of State, is so well known, and has been stated in so many publications, it is not necessary to say any thing of it here.

In the year 1765, the Rockingham administration, as it is usually styled, was appointed. This administration was weak in every thing, but "good intentions." They
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were desirous of making the public believe they were honoured with Lord Chatham's approbation; they, therefore, created the Lord Chief Justice a peer, by the title of Lord Camden, because he was Lord Chatham's friend. But this favour did not gain them his entire support in the next session of Parliament. When the Declaratory Bill, asserting the right of Parliament to make laws, binding the colonies in all cases whatsoever came into the House of Lords, he opposed it with the greatest vigour. He asserted, that the British Parliament had no right to tax America: "Whoever attempts to do it, attempts an injury: whoever does it, commits a robbery."

These words offended Mr. Grenville exceedingly: he mentioned Lord Camden's speech in the House of Commons, and declared, with an emphasis, that these particular words were a libel upon Parliament; and that the printer of the speech ought to be punished. But no notice was taken of the complaint. [The speech
was

was printed in the Political Register, and is now in the Parliamentary Debates.]

When Lord Chatham came into power in the year 1766, Lord Camden was appointed Lord Chancellor.

The affair of the corn bill in that year, and the suspension of the law, in order to prevent the exportation of corn at that time, are already well known, and have been repeatedly stated, together with the arguments for and against the suspension, in several publications, and in the Parliamentary Debates.

Lord Temple, Lord Mansfield, and Lord Littelton, were the principal opposers of Lord Camden's arguments. Lord Temple contrasted Lord Camden's doctrines when Lord Chief Justice, in the affair of general warrants, with the doctrines he had delivered upon the present occasion: in the first, he had declared, that an hour's loss of liberty to an Englishman, was inestimable: in the last he had said, that the
sus-

suspension of the law was only a forty days tyranny at the outside. This provoked Lord Camden exceedingly; and in the moment of his irritation, he drew a character of Lord Temple hypothetically, and concluded, that *if* the character he had described applied to any person, "it must be one of the narrowest, most vindictive and perfidious of human beings."

These words were repeated in the public prints some time afterwards, in a letter addressed to Lord Temple, charging him with being the patron of Junius. This letter was answered by another, addressed to Lord Camden; and as it is from the pen of Junius, the reader will not be displeased to see it.

"As a lover of my country, I cannot but view with concern the attack you have made (grounded on suspicion only) upon a noble Peer of the most respectable character in the kingdom, whether considered as a public or private man. The attack, my Lord, is as illiberal as it is unjust; and
the

and the evil tendency of it gives me concern, because I hold it essential to the public good, that men of rank, character, and real public virtue should be held out to the world for admiration and example. When virtue is once reduced to the level of ignominy and disgrace; when *Temple* shakes hands with Bute and Sandwich, there is an end of all distinction, all confidence, all substantial public hopes. The corruption of the age, my Lord, may prove the destruction of our liberty. How few are there, my Lord, who possess any character at all, and I fear none who equal that of Lord Temple? I am at a loss to know from what motive your Lordship was induced to throw out such unprovoked abuse upon the noble Lord, as that “ he “ was one of the narrowest, most vindictive, and perfidious of human beings.” Did your Lordship find him so when he stipulated with St. James’s, that you should be rewarded for the constitutional judgment, and the part you had taken in the public cause, then the cause of Mr Wilkes? Or did you find him so when he insisted
on

on that clause being inserted in the protest made upon the Middlesex question, whereby he pledged himself to the public never to desert them, but to seek a reparation for their injuries? In short, have you ever found him the man you describe? Your Lordship has not attempted to point out a single instance of proof, and I am confident you cannot.

“ I am not surpris'd that your Lordship should attempt to explain away the opinion you gave upon the corn bill, which alone justifies the censure of Junius. To hear Lord Camden, as the great constitutional lawyer of this country, supporting a dispensing power of the Crown, is too alarming to pass without reprehension. A power, the existence of which, even for a moment, destroys the very idea of a free government. If the King can justify the dispensing with an act of Parliament for forty days, he may for forty weeks, and so on *ad infinitum*, for the argument is co-extensive with the power, and he becomes as absolute as any tyrant in the uni-

universe; yet this is *the innocence of your Lordship's law*.

“ Your Lordship has insisted, that in your doctrine the King does not judge of the necessity in the first instance. Pray, my Lord, tell us who does? If I mistake not, he does. The advice originates from the Minister in council, where it is discussed, and then carried to the closet, where the King determines whether to follow or reject it; and the persons advising sign the advice for which they then become answerable. Does not the King then, my Lord, judge and decide upon the necessity in the first instance, whether we shall be slaves or freemen? My Lord, I ask you, as a lawyer, if on an action brought for detaining a vessel laden with corn, the party could have justified the detention without the assistance of Parliament? You are not hardy enough to declare they could. Yet you, my Lord, are the great and boasted constitutional lawyer, who bears for his motto the golden words of *Magna Charta*.

“ This

“ This is not the only instance in which Junius’s charge against your Lordship is truly founded. It is still in our memory that your Lordship, in giving judgment upon Mr. Wilkes’s business in the Common Pleas, declared you could foresee a time when it would be proper to take away the liberty of the press; a doctrine as destructive to the principles of general liberty, and of this constitution, as Lord Mansfield’s passive obedience and non-resistance.

“ One thing more, my Lord, before I take my leave. You tell us, that Lord Temple is the patron of Junius, and as such aim your pointless dart to wound him through the side of Junius; yet, at the same time you declare, that you will wait for mathematical demonstration before you can agree to associate Junius with Lord Temple. Your Lordship, perhaps, out of your abundant *consistency*, will explain this *inadvertency*. I am quite ignorant from what logic your Lordship draws your conclusion, that because two persons

persons agree in one opinion, that therefore one must be the patron of the other.

“ It is flattering Lord Temple to give him the private patronage of Junius. But Junius needs no patron but the public; and I assure your Lordship, they are both superior to your Lordship’s resentments. *Integer vitæ, scelerisque purus non eget mauris jocularis, &c.*”

Laying aside these personalities, he was admired as Lord Chancellor almost to enthusiasm. Every person saw with pleasure his manifest superiority in acuteness and judgment over the ablest of the counsel who pleaded before him. He was blessed by nature with a clear, persuasive, and satisfactory manner of conveying his ideas. In the midst of politeness and facility he kept up the true dignity of his important office; in the midst of exemplary patience (foreign to his natural temper, and therefore he was more commendable) his understanding was always vigilant. His me-
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mory was prodigious in readiness and comprehension: but above all, there appeared in him a kind of benevolent solicitude for the discovery of truth that won the suitors to a thorough and implicit confidence in him. He was apt, on the other hand, to be a little too prolix in the reason of his decrees, by taking notice even of inferior circumstances, and viewing the question in every conceivable light. This, however, was an error of the right side, and arose from his wish to satisfy the bar and his own mind, which was perhaps to a weakness, dissatisfied with its first impressions, however strong. He had other faults that have met with severe and deserved censure. He wore a tie-wig in court, and has been frequently observed to garter up his stockings while the counsel were the most strenuous in their eloquence. But there is one material instance *out of court*, in which, he wounded his character as a lawyer and a judge. This was the part he took in receiving and laying before the Crown certain surgical depositions tending to falsify or

weaken the grounds of a verdict pronounced by twelve men impartially returned. If the King's pardon *could not* have operated upon the case without these auxiliaries, the man should not have been pardoned; *if it could*, the justice of it was hurt by these irregularities, and a bad example *wantonly* set of trying a verdict by an incompetent and foreign judicature.

The case was stated in the London Gazette in the following manner:

Whitehall, March 11, 1769. His Majesty has been graciously pleased to extend his royal mercy to Edward M'Quirk, found guilty of the murder of George Clarke, as appears by his royal warrant to the tenor following:

GEORGE R.

Whereas a doubt had arisen in our royal breast concerning the evidence of the death of George Clarke, from the representations of William Bromfield, Esq. surgeon, and Solomon Starling, apothecary; both of whom,

whom, as has been represented to us, attended the deceased before his death, and expressed their opinions that he did not die of the blow he received at Brentford; and whereas it appears to us, that neither of the said persons were produced as witnesses upon the trial, though the said Solomon Starling had been examined before the Coroner, and the only person called to prove that the death of the said George Clarke was occasioned by the said blow, was John Foot, surgeon, who never saw the deceased till after his death: We thought fit thereupon to refer the said representations, together with the report of the Recorder of our city of London, of the evidence given by Richard and William Beale, and the said John Foot, on the trial of Edward Quirk, otherwise called Edward Kirk, otherwise called Edward M'Quirk, for the murder of the said Glarke, to the Master, Wardens, and the rest of the Court of Examiners of the Surgeons Company, commanding them likewise to take such further examination of the said persons so representing, and of said John Foot, as they might think necessary,

together with the premises above-mentioned, to form and report to us their opinion, "Whether it did or did not appear to them, that the said George Clarke died in consequence of the blow he received in the riot at Brentford on the 8th of December last." And the said Court of Examiners of the Surgeons Company having thereupon reported to us their opinion, "That it did not appear to them that he did;" We have thought proper to extend our royal mercy to him the said Edward Quirk, otherwise Edward Kirk, otherwise called Edward M'Quirk, and to grant him our free pardon for the murder of the said George Clarke, of which he has been found guilty.

By his Majesty's command,

ROCHFORD.

The following testimony of Mr. Bromfield, at the Old Bailey, forms no improper contrast to the preceding statement from the London Gazette.

Sessions

*Sessions Paper, No. 8, in the Mayoralty of
Sir J. Thompson, Knt. 1737.*

Tryal of Sarah Allen.

William Bromfield, Surgeon. I was sent for to examine the child. I found a large bruise on the back part of the head, which we call the *os occipitis*. The skull was not fractured; and the reason it was not, I think, is this; that in a subject so young, the bones are of too fine a texture to break. I took off the *cranium*, and found a large quantity of blood upon the brain, which I suppose was occasioned by the fall. There was likewise a great deal of blood in the belly and breast, which proceeded from the rupture of some blood vessel; and these things were the occasion of its death. I try'd the experiment of the lungs in water (which I take to be very certain) and they floated; this, in my opinion, was a sure sign that the child had breathed; for if it had not, they would have subsided in the water.

An accurate statement of a particular case in Chancery, while Lord Camden was Lord Chancellor, was printed in one of the morning papers, (the Public Advertiser of the 17th of February, 1774) which, as it would be now difficult to obtain, the reader will perhaps not be displeased to see a copy of it here. The case was rendered memorable, and extraordinary, by the decree which his Lordship made upon it, being reversed by the House of Lords.

We tenants being much dissatisfied at the House of Lords for their reversal of *Lord Camden's* decree in the famous case of *Peterson v. Rolfe*, wish to have the ideas of that great man better *understood*, than they were by the Lords. The late *Lord Hardwicke* said in the hearing of a Barrister, who is an acquaintance of mine, that he wished the arguments used in decrees and judgments were published every year, and signed by the several judges who pronounced them. I doubt whether the counsel for the respondents did justice to *Lord Camden's* grounds
and

and principles in his decree upon this case; and therefore as it is a point of the most extensive consequence, I have the leave of the Barrister whom I have alluded to, and who is a man of skill in his profession, to insert the following note which he took of the *substance* of what the council said, and of almost the *words* that were used by the Chancellor, *Michaelmas, 1769, Chcr. Cant.*

Peterfon v. Rolfe.

Bill filed by *Peterfon*, the Lessee, against the Defendant, his landlord, for relief against *oppressive penalties* in his covenant, which penalties had been recovered by actions at law.

Mr. Yorke for the Plaintiff.

“ Where this court can from the nature of the case find out the *real* damages, they will relieve against *enormous* ones. [*Tall and Ryland*, 1 Chanc. Caf.]

“ The material covenant in the lease before your Lordship, is a penalty against ploughing some land which had not been in

tillage for twenty years; the lease is for fourteen years; the penalty is to pay five pounds a year over and above the year's rent.

“ Subsequent to the breach of this covenant, there was a dispute between the parties; that dispute was settled by an award, yet no complaint was *then* made of this breach of the covenant. Soon after, the defendant below, now the plaintiff, refusing to give general leases, the present defendant brought his actions at law, and assigned five breaches on which the penalties amounted to £300l. and upwards. It is in evidence, that all that was done was for the *landlord's benefit*: Some *furze*, not worth two shillings an acre, was ploughed up; and it is believed by many skilful farmers in evidence, that at the expiration of the lease, the two shillings an acre will be raised to six shillings an acre.”

Mr. Yorke urged, “ that such a penalty as this was *unreasonable*; and that courts of equity

equity ought to set it aside, especially when coupled with the *small value* of the estate."

The Lease was read.

Lord Camden.

"The true hinge of this cause, is the "*enormity* of the penalty. I've computed it, and find it *near thirty times the value of the fee of the estate.*" I should rather think myself that the *furze* was not within the covenant; for as the covenant says, "*meadow or pasture, or other land,*" one might fairly conceive that "*other land must be land partaking pretty much of the same nature.*" Be that, however, as it may, here's a penalty of 600*l.* against ploughing ten acres. A forfeiture of the term would be absolutely beneficial to the tenant in comparison of this penalty.

"As to the land being improved or not improved by this breach of the covenant, it is out of the question,

"The sound principle of relief is against the penalty; as *exorbitant* at least. I confine myself to that.

"My

tillage for twenty years; the lease is for fourteen years; the penalty is to pay five pounds a year over and above the year's rent.

“ Subsequent to the breach of this covenant, there was a dispute between the parties; that dispute was settled by an award, yet no complaint was *then* made of this breach of the covenant. Soon after, the defendant below, now the plaintiff, refusing to give general leases, the present defendant brought his actions at law, and assigned five breaches on which the penalties amounted to 300*l.* and upwards. It is in evidence, that all that was done was for the *landlord's benefit*: Some *furze*, not worth two shillings an acre, was ploughed up; and it is believed by many skilful farmers in evidence, that at the expiration of the lease, the two shillings an acre will be raised to six shillings an acre.”

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"My

“ My great difficulty is about the *costs* in general. The rule is, that the plaintiff in such cases must pay the *costs* of his application: But this case is an extremely hard one.”

Mr. Wedderburne for the defendant.

“ The plaintiff in his bill seems to me to have no other equity but the supposed consent or waiver of his landlord.—This, however, is ill proved. It surely is going much too far, with deference to your Lordship, to let the party into relief here by a *quantum damnificatus* upon his wilful breach of a clear and positive covenant.

“ As to the *costs* that question must be now closed; for the plaintiff is too late. He has given judgment against himself by confessing the several breaches at law.

“ As to the *furze* not being comprized in the terms of the covenant, that question too is closed and at an end; for the plaintiff has suffered the judgment at law to go against him by default: Besides, the *furze* must

must have been an object of the intention of the parties, because it is in evidence that "other land" could attach to nothing else but the *furze*, no other land being on the premises."

Lord Camden,

"As to the plaintiff's *general relief* I can certainly give it him.

"The question is, "how far this court can abate and moderate penalties duly fixed by the parties themselves?" I take it that where damages *found in penalty*, and are much too large, this court will reach them (just as it reaches *unconscionable bargains*) upon the footing of indulgence to the frailties of human nature, and will set its face against undue advantages in one of the parties over the necessities of the other. *Landlords* have in general the advantage over their tenants in capacity and fortune, though *tenants* have more dexterity in the managing of land. To disarm them of the advantages of this dexterity *landlords* have introduced *rigorous covenants*: But this court
will

will interfere and give an *adequate compensation* according to the *real* quantum of the damage, reducing the *excess* and *enormity* of *penalties*. It is analogous to the old case of amercements, *salvo contenemento*.

“ Formerly the penalty was *forfeiture of the term*. What said this court to cases of that description? It relieved against the penalty. Why? Because it was *unconscionable* to turn a man out of possession for the breach of a little, or comparatively little, covenant. Now, in lieu of this penalty of the forfeiture the new penalty is attempted, of *increased rent*. But the principle of this court is the same to relieve against a *penalty*, in this or that shape, which is beyond the injury sustained.

“ Indeed, agreements between parties for liquidating damages will be always respected by the court; but still there must be a real substratum of damage for such agreements to operate upon.

“ I must lay down the doctrine which
Mr.

Mr. *Wedderburne* condemns ; and though he thinks I am going too far, yet I differ with him, and think it a sound rule of equity here to suppose no damage but such as actually has been committed. The 4th and 5th of Queen Anne, chap. 16, conforms to the same idea in the case of bonds. There is one *special* exception to this doctrine, which is, the case of *selling timber*, and that very exception confirms the doctrine ; for it supposes the value of the timber *a value inestimable*. [*Sir Harry Peach and the Duke of Somerset.*]

“ I don't enter now into the effect of this covenant, if it had been broke in the articles of *meadow land or pasture* ; but in this one article of the *furze*, I am clearly of opinion that the *penalty is exorbitant*, and therefore that I must relieve against it.

“ As to the costs, I shall *reserve them* till it comes out what is the real damage ; the defendant has been cruel in his behaviour ; let a jury assess the damage on a writ of *quantum damnificatus*, and endorse the *special*

tillage for twenty years; the lease is for fourteen years; the penalty is to pay five pounds a year over and above the year's rent.

“ Subsequent to the breach of this covenant, there was a dispute between the parties; that dispute was settled by an award, yet no complaint was *then* made of this breach of the covenant. Soon after, the defendant below, now the plaintiff, refusing to give general leases, the present defendant brought his actions at law, and assigned five breaches on which the penalties amounted to 300l. and upwards. It is in evidence, that all that was done was for the *landlord's benefit*: Some *furze*, not worth two shillings an acre, was ploughed up; and it is believed by many skilful farmers in evidence, that at the expiration of the lease, the two shillings an acre will be raised to six shillings an acre.”

Mr. Yorke urged, “ that such a penalty as this was *unreasonable*; and that courts of equity

equity ought to set it aside, especially when coupled with the *small value* of the estate."

The Lease was read.

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"My

acre. (See the case in page 390.) He did plough it up. And Lord Camden, when Lord Chancellor, considering that the ploughing up the furze had done more good than harm to the estate, decreed that it ought not to void the lease. It came up to the House of Lords by appeal, and Lord Mansfield, then sitting on the woolsack, reversed the decree, which made Lord Camden very angry."

CHAPTER XVI.

LATE EARL OF MARCHMONT.

*Origin of the present Manner of printing the
Debates in Parliament.*

THERE is not any thing in the character of this nobleman that could entitle him to any distinction amongst great men. He possessed some qualities of a peculiar kind, which produced consequences he never intended. To him the public are indebted for an interesting species of information, which it was his ardent and anxious wish to prevent: therefore there is no obligation due to his memory, for the benefit which his illiberality produced. The fact and the circumstances are worthy of explanation, because they form an epoch in the history of Great Britain.

During the time of Mr. Wilkes's exile, (1764) he corresponded with his friends in England, and to one of these he sent a

jeu d'esprit, consisting of the following words:

In the Press, The Parallel; or the Two Johns Dukes of Bedford; John, Regent of France, and John, the Embassador: with Letters and Anecdotes.

*Right tall he made himself for shew,
Tho' made full short by God:
And when all other Dukes did bow,
This Duke did only nod.*

SWIFT.

To which is added a Supplement, which continues the Story to the present Time.

The person to whom this jeu d'esprit was sent, caused it to be printed in the London Evening-Post. Next day, Lord Marchmont complained of it in the House of Lords, stating that it was a breach of privilege. The Printer was ordered to attend the House, and was fined a hundred pounds, besides fees, which amounted to between thirty and forty pounds more.

Lord Marchmont was in the habit of frequently complaining to the House of
Lords

Lords upon very frivolous matters, which he called breaches of privilege. The Printer of the *Gazetteer* (Say) was brought upon his knees before the House, for only saying in his paper, that the thanks of the House had been given to Sir Edward Hawke for his victory over Conflans in the month of November, 1759.

He sedulously examined the news-papers every day, with the ardour that a hawk prowls for prey. Whenever he found any Lord's name printed in any paper, he immediately made a motion in the House against the printer, for a breach of privilege. The usual fine was one hundred pounds for each offence. This practice went on for some time. In one day he levied five hundred pounds. Two hundred pounds from one man, (Baldwin.) The practice, at length, became alarming; and some Members of the House of Commons, particularly Mr. Serjeant Hewitt, afterwards Lord Liford and Chancellor of Ireland, began to entertain thoughts of making a motion in Parliament upon it. The practice and conduct

duct of Lord Marchmont was becoming equivalent to the Lords levying money. As soon as Lord Mansfield, who had been Lord Marchmont's coadjutor and adviser in this business, was informed of Mr. Hewitt's design, he stopped Lord Marchmont. But the person who had smarted for Mr. Wilkes's *jeu d'esprit*, had not forgot the circumstance, and as soon as opportunity occurred, the matter was treated with proper attention.

In the year 1771, some detached and loose accounts of the proceedings of Parliament, were printed in the news-papers. Col. George Onslow, in the House of Commons, complained of them as breaches of privilege. The printers were ordered to attend the House, which several of them did; they begged pardon, and promised not to offend again. But the Printer of the London Evening-Post, who was complained of with the others, refused to attend; upon which he was ordered to be taken into custody. As this was foreseen, it was previously

ously concerted with Mr. Wilkes, at this time an Alderman of London, that if the Messenger of the House of Commons attempted to take the printer by force, the printer was to charge him with an assault, and take him into custody; for which purpose a constable was in waiting. The thing happened as it was foreseen. The Messenger came, and insisted upon taking the printer away. The constable appeared, and took the Messenger to the Mansion-house; where Mr. Wilkes, the Lord Mayor, (Crosby) and Mr. Alderman Oliver, were in readiness. The printer made his complaint of the Messenger having assaulted him, and the Messenger was on the point of being committed, when he was bailed by the Deputy Serjeant at Arms. The House of Commons afterwards sent the Lord Mayor, and Mr. Oliver to the Tower, where they received innumerable deputations from different bodies, with thanks for their conduct. Mr. Wilkes they did not chuse to meddle with.

From the spirit of the people shewn at
this

this time, Parliament saw that the prudent measure was to give up the contest. And from that time, the debates and proceedings of Parliament have been constantly and regularly printed in the daily news-papers. This circumstance gives to the history of the age a very important advantage, derived from the peevishness and petulance of Lord Marchmont.

END OF THE FIRST VOLUME.

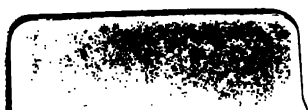
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